



City of Newburgh Council Work Session
*Sesion de trabajo del Concejal de la
Ciudad de Newburgh*
March 10, 2022
6:00 PM

Council Meeting Presentations

1. Certificates of Appreciation to Express Health
Certificados de Agradecimiento a Express Health

Engineering/Ingeniería

2. Award of Bid No. 1.22 for Construction of the North Interceptor Sewer Replacement Project
Resolution authorizing the award of a bid and the execution of a contract with Kubricky Construction Corp. for the North Interceptor Improvements Project in an amount not to exceed \$27,044,650.00

Resolución que autoriza la adjudicación de una oferta y la ejecución de un contrato con Kubricky Construction Corp. para el Proyecto de los Mejoramientos del Interceptor Norte en una cantidad que no exceda de \$27,044,650.00

3. Application to NYSDEC's Asset Management Development Program for Wastewater Infrastructure
Resolution authorizing the City Manager to apply for entrance to the New York State Department of Environmental Conservation Asset Management Program for wastewater infrastructure

Resolución que autoriza al Gerente de la Ciudad a solicitar ingreso al Programa de Gestión de Activos del Departamento de Conservación Ambiental del Estado de Nueva York para la infraestructura de aguas residuales

Water Department/ Departamento de Aqueductos

4. 2022 Solitude Lake Management Water Quality Sampling contract for Browns Pond
Resolution authorizing the City Manager to accept a proposal and execute an agreement with Solitude Lake Management for professional services for water quality sampling and analysis of Browns Pond at a cost of \$11,080.00

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Solitude Lake Management para los servicios

profesionales de análisis y muestreo de la calidad del agua de Browns Pond con un costo de \$11,080.00

5. 2022 Solitude Lake Management contract for Algae Treatment Services

Resolution authorizing the City Manager to accept a proposal and execute an agreement with Solitude Lake Management for professional services for algae treatment at Washington Lake and Browns Pond

Resolución que autoriza al Gerente de la Ciudad a aceptar una propuesta y ejecutar un acuerdo con Solitude Lake Management para los servicios profesionales de tratamiento de algas en el Lago Washington y la Charca de Brown

6. Lead Service Line Replacement Funding

Resolution authorizing and allocating \$1,000,000.00 of American Rescue Plan Act of 2021 funding to the City of Newburgh Lead Service Line Replacement Program

Resolución que autoriza y asigna un millón de dólares de la ley del Plan Americano de Rescate de 2021 al Programa de Reemplazo de Tuberías de Plomo de la Ciudad de Newburgh

7. Contractor List for Lead Line Replacement Program

Resolution designating a list of qualified plumbing contractors to perform work in connection with the City of Newburgh Lead Service Line Replacement Program

Resolución designando una lista de contratistas de plomería calificados para llevar a cabo trabajos en conexión con el Programa de Reemplazo de Tubería de Plomo de la Ciudad de Newburgh

Planning and Economic Development/Planificación y Desarrollo Económico

8. Agreement with Elizabeth McEnaney for Consultant Services

Resolution authorizing an agreement between the City of Newburgh and Elizabeth McEnaney for professional grant consulting services related to the Dutch Reformed Church

Resolución que autoriza un acuerdo entre la Ciudad de Newburgh y Elizabeth McEnaney para servicios profesionales de consultación de subvenciones relacionados a la Iglesia Reformada Holandesa

Grants/Contracts/Agreements / Becas /Contratos/Convenios

9. Agreement for American Sign Language/English Interpreting Services with Taconic Resources for Independence, Inc. and the program of Mid-Hudson Interpreter Service

Resolution authorizing an agreement between the City of Newburgh and The Mid-Hudson Interpreter Service Program of Taconic Resources for Independence, Inc. for American Sign Language/English Interpreting Services

Resolución que autoriza un acuerdo entre la Ciudad de Newburgh y el Programa de Servicios de Interpretación del Medio Hudson de Taconic Resources for Independence, Inc. para los Servicios de interpretación de lenguaje de señas americano/inglés

10. Subrecipient Agreement Extension - Catholic Charities Orange Sullivan Ulster

Resolution authorizing the City Manager to extend the term of a Community Development Block Grant (CDBG-CV3) sub-recipient grant agreement in the amount of \$30,000.00 with Catholic Charities of Orange, Sullivan & Ulster for the allocation of Coronavirus Aid, Relief, and Economic Security Act funding to support food distribution programs and services

Resolución que autoriza al Gerente de la Ciudad a prorrogar el plazo de un acuerdo de subvención de los Bloques de Desarrollo Comunitario (CDBG-CV3) por un importe de 30.000,00 dólares con Caridades Católicas de Orange, Sullivan y Ulster para la asignación de fondos de la Ley de Ayuda, Socorro y Seguridad Económica de Coronavirus para apoyar los programas y servicios de distribución de alimentos.

11. Orange County STOP DWI 2022

Resolution authorizing the City Manager or the Police Commissioner or Police Chief, as Manager's designee, to execute an Inter-Municipal Agreement with the County of Orange confirming City of Newburgh participation in the Stop-DWI Program for the enforcement period of March 12, 2022 to January 1, 2023 and to accept an award not to exceed \$4,550.70 covering 70 person-hours for the first enforcement period of 2022 (March 12, 2022 – June 1, 2022)

Resolución autorizando al Gerente de la Ciudad o al Comisario de Policía o al Jefe de Policía, como designado del Gerente, a ejecutar un acuerdo Inter-Municipal con el Condado de Orange confirmando la participación de la Ciudad de Newburgh en el Programa Stop-DWI para un periodo de realización del 12 de marzo de 2022 a 1 de enero de 2023 y para aceptar una concesión que no exceda \$ 4,550.70 el cual cubre 70 horas de persona para el primer periodo de realización del 2022 (12 de marzo de 2022 - 1 de junio de 2022)

12. License Agreement - The Cathedral at The House - Heathy Orange Farmers Market at 140 Broadway

Resolution authorizing the City Manager to enter into a license agreement with The Cathedral at The House f/k/a House of Refuge to allow use of City owned property located at 140 Broadway for the Healthy Orange Farmers Market

Resolución que autoriza al Gerente de la Ciudad a entrar en un acuerdo de licencia con The Cathedral at The House f/k/a House of Refuge para permitir el uso de la propiedad de la Ciudad ubicada en el 140 de Broadway para el Healthy Orange Farmers Market

Boards and Commissions/Juntas y Comisiones

13. Police Community Relations & Review Board - appointments
Junta de Relaciones Comunitarias y Revisión de la Policía - nombramientos

Executive Session/ Sesión Ejecutiva

14. Proposed, pending or current litigation
Litigio propuesto, pendiente o actual
15. the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation
el historial médico, financiero, crediticio o laboral de una persona o corporación en particular, o asuntos que conduzcan al nombramiento, empleo, promoción, degradación, disciplina, suspensión, despido o remoción de una persona o corporación en particular

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE AWARD OF A BID AND THE EXECUTION OF
A CONTRACT WITH KUBRICKY CONSTRUCTION CORP. FOR
THE NORTH INTERCEPTOR IMPROVEMENTS PROJECT
IN AN AMOUNT NOT TO EXCEED \$27,044,650.00**

WHEREAS, by Resolution No. 219-2011 of October 24, 2011, the City Council of the City of Newburgh, New York authorized the City Manager to execute an Order on Consent with the New York State Department of Environmental Conservation ("NYSDEC") to resolve violations at the Wastewater Treatment Plant and for the development of the CSO Long Term Control Plan ("LTCP"); and

WHEREAS, the City submitted its Phase I LTCP and by Resolution No. 303-2015 of November 23, 2015, the City Council authorized the City Manager to execute a Modification Order on Consent approving a Compliance Schedule for Phase I through V of the LTCP; and

WHEREAS, by Resolution No. 189-2019 of August 12, 2019 and Resolution No. 113-2020 of May 28, 2020, the City Council authorized professional engineering services agreements with Arcadis of New York, Inc. to complete planning, preliminary engineering, design and bid documents for LTCP Phase III North Interceptor Improvements Project which has a notice to proceed date for construction of April 4, 2022; and

WHEREAS, the City of Newburgh has duly advertised for bids for the construction of the North Interceptor Improvements Project; and

WHEREAS, bids have been duly received and opened, and Kubricky Construction Corp. is the low bidder; and

WHEREAS, funding for such project an amount not to exceed \$27,044,650.00 shall be derived from a combination of funding sources, including a NYSDEC Water Quality Improvement Grant awarded in the amount of \$10,000,000; American Rescue Plan Act funding in the amount of \$2,000,000; a Water Infrastructure Improvement Act Grant in an estimated amount of \$5,000,000; and NYSEFC Zero Interest Hardship Financing for the balance of the project costs in an estimated amount of \$11,000,000; and

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for construction of the North Interceptor Sewer Main Improvements Project be and it hereby is awarded to Kubricky Construction Corp. in an amount not to exceed \$27,044,650.00; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh that the City Manager be and he is hereby authorized to enter into a contract for such work in this amount.

Sent via E-mail

Jason Morris, PE
City Engineer
City of Newburgh
83 Broadway
Newburgh, New York 12550

Arcadis of New York, Inc.
855 Route 146
Suite 210
Clifton Park
New York 12065
Phone: 518 250 7300
Fax: 518 371 2757
www.arcadis.com

Date: March 1, 2022

Our Ref: 30056038

Subject: Bid No. 1.22 – North Interceptor Sewer Replacement Bid Results and Recommendation

Dear Mr. Morris,

Arcadis of New York, Inc. (Arcadis) has reviewed the tabulated Bids received by the City of Newburgh (City) on February 24, 2022, for Bid No. 1.22 – North Interceptor Sewer Replacement. A total of two Bids were received. The tabulated Bid results are enclosed for your convenience. The apparent low Bidder is Kubricky Construction Corp. of Wilton, New York with a base bid of \$27,044,650.00, inclusive of \$1,149,650 in allowances and estimated unit price work. We have reviewed the Bids and have determined the apparent low bidder to be responsive in accordance with the Instructions to Bidders.

The original project developed during the planning phase changed as the design progressed. Changes to the project which added scope and cost were:

- ADA compliant curb ramps and curb bump outs along Colden Street,
- Modifications to the storm sewer and catch basins along Colden Street,
- Full depth pavement replacement on Colden Street between Broadway and Second Street,
- Modifications to the water lines at the intersection of Broadway and Colden Street and along South Water Street.

Over the past couple of years there have been supply chain issues and labor shortages associated with the COVID 19 pandemic and material volatility. These factors coupled with historically high inflation this past year has resulted in construction prices to significantly increase. New York State Environmental Facilities Corporation (NYSEFC) recently indicated that projects funded through the Clean Water State Revolving Fund (CWSRF) have been double or triple the estimated costs. Arcadis's cost estimate (attached) that was prepared based on the bidding documents and addenda was \$23.1M.

Arcadis does not know when the continued increase in construction costs will end as it is tied to market volatility and potentially the most recent current events. If the City were to elect to re-bid the project the subsequent bid prices received may increase. It is important to consider that the City has received Water Infrastructure Improvement Act (WIIA) grant (25% grant) for the design and bidding, a \$10M Water Quality Improvement Grant (WQIP) for construction and is expecting a positive decision on an additional WIIA grant (25%) for construction as well. It is our understanding that the City has committed \$2M in American Rescue Plan Act (ARPA) funds for construction of the project. The remainder of the project cost not covered by grant funding will be financed by NYSEFC with a zero-interest hardship loan that has been applied for already.

Mr. Jason Morris
City of Newburgh
March 1, 2022

Therefore, Arcadis recommends that the City consider awarding the Contract for Bid No. 1.22 to Kubricky Construction Corp. in the amount of \$27,044,650.00, inclusive of estimated unit price work. If you have any further questions pertaining to this project, please call me at your earliest convenience so that we can be of further assistance.

Sincerely,
Arcadis of New York, Inc.



A.J. Brooks, PE
Project Manager

Email: a.j.brooks@arcadis.com
Direct Line: 518 250 7374

CC. R. Ostapczuk, Arcadis

Enclosures:
Bid Opening Report
Cost Estimate

BID OPENING REPORT



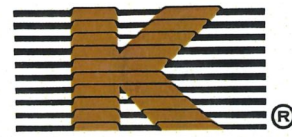
Arcadis of New York
855 Route 146, Suite 210
Clifton Park, New York 12065

Project Name: North Interceptor Sewer Replacement		Project Number: 30056038		Sheet 1 of 1	
Location: City of Newburgh, Orange County, New York		Read Aloud By: Claire Superak, Arcadis of New York, Inc.			
Bid Opening Date and Time: February 24, 2022 at 11:00 am		Recorded By: Robert VanVlack, Account			
Location: City Hall, 83 Broadway, Newburgh, New York 12550		Witnessed By: Anna Marie Calli, Sr			
Name of Contract: General Construction		Bid No. 1.22		Date: Thursday, February 24, 2022	
		Name of Bidder			
		Kubricky Construction Corp. 2/24/2022 @ 10:39AM		Montana Consruction Corp. Inc. 2/24/2022 @ 10:27AM	
Bid Results	Qty. Unit				
Item No. 1 General Construction	1 LS	\$12,845,000.00		\$18,727,500.00	
Item No. 2 Tunnel and Shaft Excavation	1 LS	\$12,100,000.00		\$13,711,111.00	
Item No. 3 ADA Curb Ramps and Bumpouts	1 LS	\$950,000.00		\$1,000,000.00	
Item No. 4 Contingency Allowance	1 LS	\$750,000.00		\$750,000.00	
Total of All Lump Sum Bid Items		\$26,645,000.00		\$34,188,611.00	\$0.00
Unit Price Items		Unit Price	Total Item Price	Unit Price	Total Item Price
Item No. 5 Rock Removal	500 CY	\$235.00	\$117,500.00	\$1,000.00	\$500,000.00
Item No. 6 Additional Waterline Relocation	10 EA	\$5,800.00	\$58,000.00	\$5,000.00	\$50,000.00
Item No. 7 Sewer Lateral Reconnection	5 EA	\$9,300.00	\$46,500.00	\$5,000.00	\$25,000.00
Item No. 8 Additional Decorative Sidewalk	1000 SF	\$25.00	\$25,000.00	\$35.00	\$35,000.00
Item No. 9 Additional Traditional Sidewalk	500 SF	\$19.00	\$9,500.00	\$17.00	\$8,500.00
Item No. 10 Additional Removal and Disposal of Abandoned Utilities	200 LF	\$110.00	\$22,000.00	\$100.00	\$20,000.00
Item No. 11 Contaminated Soil	50 TON	\$205.00	\$10,250.00	\$200.00	\$10,000.00
Item No. 12 Additional Flowable Fill	100 CY	\$325.00	\$32,500.00	\$200.00	\$20,000.00
Item No. 13 Additional Test Pits	20 EA	\$920.00	\$18,400.00	\$200.00	\$4,000.00
Item No. 14 Bypass Pumping Watch Person	300 HR	\$200.00	\$60,000.00	\$200.00	\$60,000.00
Total of All Unit Price Bid Items			\$399,650.00		\$732,500.00
Total Bid Price		\$27,044,650.00		\$34,921,111.00	
Addenda Rec'd	✓		✓		
Bid Security	Bond		Bond		
Qualification Statement	✓		✓		
List of Subcontractors & Suppliers	✓		✓		
Non-Collusive Certificate	✓		✓		
Worker's Compensation Affidavit	✓		✓		
Iranian Divestment Form	✓		✓		
Disclosure of Lobbying Activities	✓		✓		
AIS Contractor's Certification	✓		✓		

Client	City of Newburgh	Opinion of Probable Construction Cost Summary	
Project Name	North Interceptor Sewer Replacement and Improvements	Prepared By: L. Flanigan	
Date:	February-22	Checked By:	
Division	Description	Engineer's Opinion of Probable Construction Cost	% of Total
1	General Requirements	\$ 1,191,000	5.2%
2	Existing Conditions	\$ 1,530,000	6.6%
3	Concrete	\$ 410,000	1.8%
31	Earthworks	\$ 10,623,000	46.0%
32	Exterior Improvements	\$ 1,178,000	5.1%
33	Utilities	\$ 3,538,000	15.3%
	Opinion of Probable Total Bid Price (Point Estimate)	\$ 18,470,000	80.0%
	Opinion of Probable Total Bid Price (Low Estimate (-10%))	\$ 16,630,000	72.0%
	Opinion of Probable Total Bid Price (High Estimate (+12.5%))	\$ 20,780,000	90.0%
Payment %'s			
Construction Contingency Factor (to cover typical change orders)		25%	
		Point Estimate	
Opinion of Probable Total Construction Cost		\$23,087,500	
Low Range Estimate (-10%)		\$20,780,000	
High Range Estimate (+12.5%)		\$25,980,000	
Costs above include the following contractor overhead categories			
Bonds		3.0%	
Mobilization		2.0%	
Demobilization		1.0%	
Insurance		3.0%	
Overhead & Profit		15.0%	
Contractor's Management Reserves (Contractor's Risk)		2.5%	
Subtotal (OH&P & General Conditions compounded)		28.5%	
Annual Rate of Inflation		3%	
Mid-Point of Construction		7/1/2023	
Escalation from Date of Estimate to Mid-Point of Construction		4.2%	
Subtotal Indirect Cost (compounded w. subtotal)		33.8%	
Contractor Overhead and Profit contribution to Item 1 Cost		\$ 6,251,578	
The following assumptions and reference were used to develop the opinion of probable cost			
1. All unit costs are rounded to the nearest \$1,000			
2. All final Opinions are rounded up to the nearest \$10,000			
3. Opinions of Probable Cost are based on Bid Documents.			
4. Typical Div 1 contractor overhead factors are additive (i.e. bonds, mobilization, demobilization, and insurance)			
5. Other overhead and profit, construction contingency, and escalation factors are compounded.			
6. Estimates are consistent with an AACE Class 2 construction cost estimate.			
7. AACE Class 2 estimates are typically accurate on the low range between -5% & -15% and on the high range between +5% & +20%.			
8. Both a bid price estimate and a total construction cost estimate are provided.			
9. The Construction Cost Estimate includes a 25% construction contingency which is anticipated to cover typical change orders due to field conditions.			

Unofficial Bid Tabulation

Project Name:	Bid No. 1.22 - North Interceptor Sewer Replacement	
Location:	City of Newburgh, Orange County, New York	
Bid Opening Date and Time:	February 24, 2022 at 11:00 am - Council Chambers - 3rd Floor	
Location:	City Hall, 83 Broadway, Newburgh, NY 12550	
Meeting Start: 11:07 AM / Meeting End: 11:19 AM		
Read Aloud By: Claire Superak, Arcadis of New York, Inc.		
Recorded By: Robert VanVlack, Account Clerk		
Witnessed By: Anna Marie Calli, Sr. Account Clerk		
Non-Public Bid Opening Conducted By: Elizabeth Garrison, Admin. Assistant to City Engineer		
Name of Bidder		
Bid Results	Kubricky Construction Corp.	Montana Construction Corp., Inc.
Total of All Lump Sum Bid Items	\$ 26,645,000.00	\$ 34,188,611.00
Total of All Unit Price Bid Items	\$ 399,650.00	\$ 732,500.00
Total Bid Price	\$ 27,044,650.00	\$ 34,921,111.00

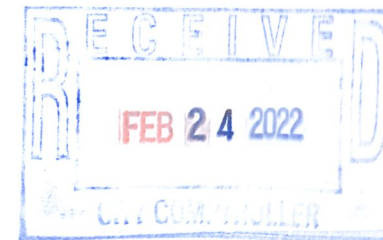


KUBRICKY CONSTRUCTION CORP.

269 Ballard Road
Wilton, New York 12831



City of Newburgh Acting Comptroller
Attn: Ryan Cianceanelli
City of Newburgh
83 Broadway
Fourth Floor
Newburgh, New York 12550



10:39 A.m
RVV
2/24/22

BID ENCLOSED:

BID # 1.22 for North Interceptor Sewer
Replacement
February 24th, 2022 @ 11:00 a.m

BID FORM

CITY OF NEWBURGH NORTH INTERCEPTOR SEWER REPLACEMENT PROJECT BID NO. 1.22

TABLE OF ARTICLES

1. Bid Recipient
2. Bidder's Acknowledgements
3. Bidder's Representations
4. Bidder's Certifications
5. Basis of Bid
6. Time of Completion
7. Attachments to this Bid
8. Defined Terms
9. Bid Submittal

ARTICLE 1 – BID RECIPIENT

- 1.01 This Bid is submitted to:

City of Newburgh Acting Comptroller
Attn: Ryan Ciancanelli
City of Newburgh
83 Broadway
Fourth Floor
Newburgh, New York 12550

- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with Owner, by executing the Agreement form included in the Bidding Documents, to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

- 2.01 Bidder accepts all the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda.

Addendum No.	Addendum Date
Addendum No. 1	01/25/22
Addendum No. 2	01/28/22
Addendum No. 3	02/02/22
Addendum No. 4	02/08/22
Addendum No. 5	02/23/22

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance

of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATIONS

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of the Paragraph 4.01.D;
 - 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

- 5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Item 1 Lump Sum Bid Price for General Construction	\$ 12,845,000. ⁰⁰
Item 2 Lump Sum Bid Price for Tunnel and Shaft Excavation	\$ 12,100,000. ⁰⁰
Item 3 Lump Sum Bid Price for ADA Curb Ramps and Bump Outs	\$ 950,000. ⁰⁰
Item 4 Lump Sum Contingency Allowance	\$750,000

Total of All Lump Sums

\$ 26,645,000.⁰⁰

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
5	Rock Removal	CY	500	\$ 235. ⁰⁰	\$ 117,500. ⁰⁰
6	Additional Waterline Relocation	EA	10	\$ 5,800. ⁰⁰	\$ 58,000. ⁰⁰
7	Sewer Lateral Reconnection	EA	5	\$ 9,300. ⁰⁰	\$ 46,500. ⁰⁰
8	Additional Decorative Sidewalk Replacement	SF	1,000	\$ 25. ⁰⁰	\$ 25,000. ⁰⁰
9	Additional Traditional Sidewalk Replacement	SF	500	\$ 19. ⁰⁰	\$ 9,500. ⁰⁰
10	Additional Removal and Disposal of Abandoned Utilities	LF	200	\$ 110. ⁰⁰	\$ 22,000. ⁰⁰
11	Contaminated Soil	TON	50	\$ 205. ⁰⁰	\$ 10,250. ⁰⁰
12	Additional Flowable Fill	CY	100	\$ 325. ⁰⁰	\$ 32,500. ⁰⁰
13	Additional Test Pits	EA	20	\$ 920. ⁰⁰	\$ 18,400. ⁰⁰
14	Bypass Pumping Watch Person for Wet Weather Events	HR	300	\$ 200. ⁰⁰	60,000. ⁰⁰
Total of All Unit Price Bid Items					\$ 399,650. ⁰⁰

Bidder acknowledges that (1) each bid unit price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Work will be based on actual quantities, determined as provided in the Contract Documents.

Total of Lump Sum and Unit Price Bids =
Total Bid Price

\$ 27,044,650.⁰⁰

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO
APPLY FOR ENTRANCE TO THE NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ASSET MANAGEMENT PROGRAM FOR WASTEWATER INFRASTRUCTURE**

WHEREAS, the New York State Department of Environmental Conservation has announced a New York State Asset Management Program for the purpose of providing municipalities the opportunity to evaluate the resiliency of wastewater assets and develop a plan to protect critical wastewater infrastructure assets; and

WHEREAS, New York State will select and hire an Asset Management Advisor and environmental engineering firms to work with the selected municipalities to develop and begin the implementation of its Asset Management Plan and at the conclusion of the Program, the participating municipalities can expect to have completed Asset Management Plans; and

WHEREAS, there will be no out-of-pocket costs to participating municipalities related to the development of their Asset Management Plans but are expected to commit staff resources necessary for development and implementation of Asset Management Plans which is expected to take approximately 18 months; and

WHEREAS, this Council has determined that applying to and accepting entry into the New York State Asset Management Program if selected is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept entrance if awarded to the New York State Department of Environmental Conservation Municipal Asset Management Program; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to enter, participate in and administer the programs developed and implemented thereby.



**Department of
Environmental Conservation**

**Environmental
Facilities Corporation**

ASSET MANAGEMENT PROGRAM (AMP)

Call for Communities

Guidelines for Participating Municipalities

Program Overview

The New York State Department of Environmental Conservation (DEC) and the New York State Environmental Facilities Corporation (EFC) are jointly soliciting applications for Publicly Owned Treatment Works (POTWs) and Publicly Owned Sewer Systems (POSSs) to participate in the State's Asset Management Program (the Program).

Due to the success of the first Asset Management Pilot Program (the Pilot), completed in 2021, DEC and EFC are now advancing and expanding upon the Program to provide the necessary resources to enable municipalities to evaluate the resiliency of their wastewater assets and develop a plan to protect these critical assets. During the Pilot, a single engineering firm worked with 10 municipalities of various sizes across the state to develop AMPs and recommend improvements to DEC's Municipal Sewage System Asset Management Guide, now called the Asset Management Guide for Publicly Owned Treatment Works (the "Guide"). The Guide is available on DEC's Asset Management [website](#).

As defined in the Guide, an AMP includes the following components:

- Asset inventory
- Condition assessment
- Level of service profile
- Likelihood of failure, consequence of failure, and risk assessment
- Capital improvement plans
- Sustainable ownership assessment
- Maintenance planning

Municipalities participating in the Program will have the unique opportunity to use the Guide to learn, develop, and implement AMPs under the direction and guidance of selected engineering firms. AMPs can support municipalities to meet stakeholder demands by focusing on the system's financial and functional sustainability, prolonging asset life and aiding in rehabilitation, repair, and replacement decisions through efficient and focused operation and maintenance (O&M), as well as reducing overall operational costs and capital expenditures.

Through the Pilot, DEC and EFC learned that a sustainable AMP requires commitment from all departments within a municipality. Representatives from all affected departments, including operations, fiscal, engineering, and others, are necessary to create a program that will last through transitions and staff turnover.

Municipalities participating in the Program have an opportunity to provide valuable input in shaping the final guidance and future state asset management requirements.

The Program is expected to run for five years and will have up to 50 municipalities who volunteer to participate. It is not anticipated that the municipalities will be involved for the full five years. Please see the [Anticipated Timeline for Municipal Involvement](#) for more information. Municipalities should be aware that filing an application does not guarantee that they will be selected for the Program. DEC and EFC (the State) will evaluate all complete applications and will select municipalities to participate.

Municipalities with existing AMPs are encouraged to apply. Municipalities who previously expressed interest in participation in the Program are encouraged to apply again as previous applications will not be considered. DEC will notify all applicants as to whether they have been selected or not. Applicants with questions can contact DEC through the asset management mailbox: **asset@dec.ny.gov**.

The State will administer and oversee the Program. The State will select and hire an Asset Management Advisor (the Advisor) and environmental engineering firms (the Firms) to work with the selected municipalities. The Advisor will train the Firms and approve the AMPs developed by the Firms. The Firms will work with each selected municipality to develop and begin the implementation of its AMP. The State will develop a workplan for the Firms to complete within the given timeframe.

At the conclusion of the Program, the participating municipalities can expect to have completed AMPs for their POTWs or POSSs and acquired the tools (e.g., electronic asset management system) to implement the Program. The AMPs will be based on the framework outlined in the DEC's Guide. For municipalities that have already developed an AMP, the Program can help them to enhance the AMP and to align with the Guide.

Municipal Contribution

This is a voluntary program, and there will be no out-of-pocket costs to participating municipalities related to the development of their AMP. However, participating municipalities are expected to commit staff resources necessary for AMP development and implementation. AMP development is expected to take six months, implementation is expected to take one year, and off-boarding is expected to take one month. It is also expected that the municipality will continue to use the AMP, and update the AMP as necessary, beyond the duration of the Program.

Municipal Staff Commitments

The selected municipality will be responsible for committing staff to work with its assigned Firm to develop and implement the AMP. Participating municipalities will be required to assemble an Asset Management Team (Team). The Team should consist of staff knowledgeable in wastewater operations, collection system operations, municipal finances, quality assurance, and municipal decision making. The Team will be involved in development and implementation of the Program. The municipality will be responsible

for providing identified staff the time necessary to attend trainings. It is anticipated that most trainings will be offered locally or remotely via a web-based platform. The Team will be responsible for understanding and implementing the AMP.

Staff selected for the Team should have the following qualifications and characteristics:

- Willing to provide descriptive feedback to the State about the AMP and Asset Management development/implementation.
- Actively participate in meetings with the Firm, Advisor, and State to discuss program status and any questions or concerns.
- Willing and able to learn and use the State's provided electronic Asset Management software for the duration of the Program¹.
- Able to give presentations and speak with others about how the AMP is working in their municipality and for their POTW/POSS.

Resource Commitments

The municipality may be expected to supply meeting space (e.g., conference room). The municipality must provide the Firm with facility records and site access. Staff must have daily access to internet, email, and State provided Asset Management software. Software requirements can be found in Appendix A.

Program Commitment

The State expects to work with municipalities committed to the duration of the Program. However, the State recognizes there may be extenuating circumstances that cause a municipality to need to opt-out of the Program. In these rare instances, the municipality will be required to notify the State in writing of their decision to end their participation in the Program. Within 30 days of the date of the notification, the municipality will be required to set up a meeting for all municipal staff that participated in the Program to discuss their experiences in the Program with State and Firm and why the municipality chose to opt-out.

¹ Selected municipalities will have access to and ownership of all data compiled through the Program. Please contact asset@dec.ny.gov for more information.

Anticipated Activities

Below is a breakdown of the activities that the State expects each municipality to complete during the Program.

After Award Announcement

The selected municipalities will start assembling information related to the POTW/POSS. This information and the required format are outlined in Appendix A. Since it can take several months to gather relevant information, starting this process early will allow the Firm to focus on the development of the AMP. It is also recommended that the municipality notify their residents of the POTW's/POSS's participation in the Program.

The State, Advisor, or the Firm will provide access to a shared cloud-based folder for the municipality to use for storing and organizing information. The State, Advisor, or the Firm may contact municipal officials to check on progress.

Anticipated Timeline for Municipal Involvement

AMP Development

Estimated Duration: 6 Months

The municipality will work with the Firm to develop an AMP for the POTW/POSS. As part of preparing the AMP, the municipality will be responsible for providing information to the Firm about the POTW/POSS (Appendix A). The municipality will take part in Asset Management trainings provided by the Advisor and Firm. The Firm will develop the AMP in accordance with the Guide.

AMP Initial Implementation

Estimated Duration: 1 Year

The Firm will be available to provide the municipality support during initial implementation of its AMP. The municipality will work with the AMP and the provided tools to identify any issues that may hinder long-term implementation and success of the AMP. For example, this means ensuring that the information entered by the Firm accurately reflects the state of the municipality's assets. The municipality will be responsible for committing staff to this task and to implement the AMP to the maximum extent practicable.

The municipality will conduct outreach to the public and other stakeholders regarding progress on implementing the AMP. Examples of outreach include flyers, webpage updates, and public meetings. The Firm will provide assistance preparing the outreach materials, including a presentation template for the municipal staff to use at public meetings.

Community Off-Boarding

Estimated Duration: 1 Month

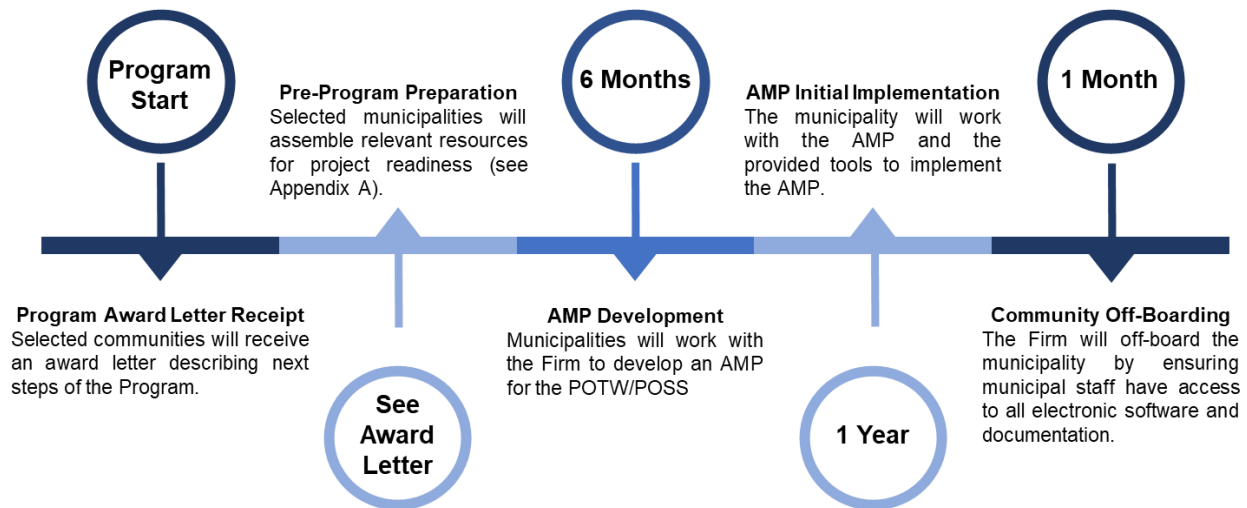
The Firm will off-board the municipality by ensuring the following items are complete:

- Municipal staff have access to the Asset Management software.

- All AMP documentation, information, and training has been provided in electronic format.
- Municipal staff have a list of next steps for AMP implementation.

The State or Advisor will solicit descriptive feedback from municipalities about the Program and process once off-boarding is complete.

An example timeline for municipal involvement is depicted below:



Appendix A: Relevant Resources for Project Readiness

Selected municipalities are encouraged to begin preparing for AMP development upon selection and before being paired with a Firm. These resources are needed in order to develop the AMP. A preferred format is listed for best integration with the electronic asset management software. This information can be stored in the shared folder in the cloud provided by DEC or the Firm.

Resource	Use	Preferred Format
Asset Vendor O&M Manuals	Asset Inventory	Scanned / digital
Equipment Shop Drawings	Asset Inventory	Scanned / digital
Facility Plans / Engineering Reports	Asset Inventory	Scanned / digital
Facility Drawings	Asset Inventory	Scanned / digital
Facility Maps	Asset Inventory	GIS
Collection System Maps	Asset Inventory	GIS
Copies of Purchase Orders or other procurement records for capital assets	Asset Inventory	Scanned / digital
Past 5-year detailed annual budgets for wastewater collection and treatment facilities	Asset Inventory, Capital Improvement Plan, Rate Analysis	Scanned / digital
Manhole Inspection Data	Condition Scoring	Scanned / digital
PACP CCTV Data	Condition Scoring	Scanned / digital
Smoke Testing, Die Testing, Other Condition Assessment Information	Condition Scoring	Scanned / digital
Sewer System Evaluation Studies	Condition Scoring	Scanned / digital
Installation and Construction Records	Condition Scoring	Scanned / digital
Previous Maintenance Logs	Management Capital Investments	Scanned / digital
Historical work orders, records of problems and asset failures	Management Capital Investments	Scanned / digital
Documented standard operating procedures	Management Capital Investments	Scanned / digital
Documented preventive maintenance procedures and schedules	Management Capital Investments	Scanned / digital
Any existing capital improvement plans, forecasts, potential projects	Capital Improvement Plan	Scanned / digital
A copy of any existing Sewer Rate Model and Sewer Rate Study including sewer rate recommendations	Sewer Rate Analysis	Scanned / digital
Details of current source of revenue for Wastewater System, rates, etc.	Sewer Rate Analysis	Scanned / digital

Resource	Use	Preferred Format
Itemized annual administrative, operations and maintenance expenditures attributable to providing sewerage services over past 5 years	Sewer Rate Analysis	Scanned / digital
Most recent Utility Comprehensive Annual Financial Report (that includes sewer utility)	Sewer Rate Analysis	Scanned / digital
Current water and sewer rate structure	Sewer Rate Analysis	Scanned / digital
Method by which sewer rates are set and data required, such as amount of water sold or customer billing analysis as applicable.	Sewer Rate Analysis	Scanned / digital
Information on current debt including debt service expenditures, debt by source, repayment schedules	Sewer Rate Analysis	Scanned / digital
Summary of any funding / grant applications and awards	Long Term Funding Strategy	Scanned / digital
Details of the organizations debt financing / Pay-Go Policy	Long Term Funding Strategy	Scanned / digital

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A PROPOSAL AND EXECUTE AN AGREEMENT WITH
SOLITUDE LAKE MANAGEMENT FOR PROFESSIONAL SERVICES FOR
WATER QUALITY SAMPLING AND ANALYSIS OF BROWNS POND
AT A COST OF \$11,080.00**

WHEREAS, the City of Newburgh needs to monitor water quality at Browns Pond for potential harmful algal blooms as the City's back up water supply; and

WHEREAS, a water quality monitoring program will focus on proactive management of monitoring for potential harmful algal blooms; and

WHEREAS, Solitude Lake Management has submitted a proposal for professional services related to water quality sampling and analysis of Browns Pond; and

WHEREAS, the cost for such professional services will be \$11,080.00 and funding shall be derived from F.8389.0448.5022; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such work would be in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Solitude Lake Management for professional services related to a Water Quality Sampling and Analysis Program for Browns Pond at a cost of \$11,080.00.



SERVICES CONTRACT

CUSTOMER NAME: City of Newburgh
SUBMITTED TO: Wayne Vradenburg
CONTRACT EFFECTIVE DATE: May 1, 2022 through December 31, 2022
SUBMITTED BY: Kevin Shank, Assistant Regional Manager/Environmental Scientist
Steven Gniadek, Regional Administrative Coordinator
SPECIFICATIONS: 2022 Water Quality Sampling and Analysis for Brown's Pond

This agreement (the "Agreement") is made as of the date indicated above, and is by and between SOLitude Lake Management, LLC ("Solitude" or the "Company") and the customer identified above (the "Customer") on the terms and conditions set forth in this Agreement.

1. The Services. SOLitude will provide services at the Customer's property as described in Schedule A attached hereto:
2. PAYMENT TERMS. The fee for the Services is **\$11,080.00**. SOLitude shall invoice Customer **\$1,385.00 per month, May through December** for the Services to be provided under this Agreement. The term of this agreement is for a period of eight (8) months, with payment invoiced on the first day of each month, reminding them that a contract payment is due by the end of that same month. The customer is obligated to pay each monthly contract payment per the terms of this contract, without any obligation on the part of SOLitude to invoice or send any other sort of reminder or notice. Due to the seasonality of these services, and the disproportionate amount of time and materials dedicated to providing these services during some times of the year as compared to others, based on the season, weather patterns, and other natural factors, the amount billed and paid to date is not necessarily equivalent to the amount of work performed to date. The Customer will be liable for any returned check fees and any collection costs, including reasonable attorney fees and court costs, for any invoices not otherwise timely paid, and interest at the rate of 1% per month may be added to all unpaid invoices. Should the work performed be subject to any local, state, or federal jurisdiction, agency, or other organization of authority for sales or other taxes or fees in addition to those expressly covered by this contract, the customer will be invoiced and responsible for paying said additional taxes in addition to the contract price and other fees above. SOLitude shall be reimbursed by the customer for any non-routine expenses, administrative fees, compliance fees, or any other similar expense that are incurred as a result of requirements placed on SOLitude by the customer that are not covered specifically by the written specifications of this contract.
3. TERM AND EXPIRATION. This Agreement is for an annual management program as described in the Schedule A attached. Any additional services will be provided only upon additional terms as agreed to by the parties in writing.

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4. TERMINATION. If SOLitude terminates your service for nonpayment or other default before the end of the Services Contract, if the Customer terminates this Services Contract for any reason other than in accordance with the cancellation policy outlined above, or in the event this Contract does not automatically renew and the customer terminates it before the termination date, Customer agrees to pay SOLitude, in addition to all other amounts owed, an Early Termination Fee in the amount specified below ("Early Termination Fee"). The Customer's Early Termination Fee will be 50% of the remaining value of the Contracted Price. The Early Termination Fee is not a penalty, but rather a charge to compensate SOLitude for the Customer's failure to satisfy the Services Contract on which the Customer's rate plan is based.
5. INSURANCE AND LIMITATION OF LIABILITY. SOLitude will maintain general liability and property damage insurance as necessary given the scope and nature of the Services. The Company will be responsible for those damages, claims, causes of action, injuries or legal costs to the extent of its own direct negligence or misconduct, and then only to an amount not to exceed the annual value of this Agreement. In no event will any party to this Agreement be liable to the other for incidental, consequential or purely economic damages.
6. FORCE MAJEURE. The Company shall not be liable for any delay in performing the Services, nor liable for any failure to provide the Services, due to any cause beyond its reasonable control.
7. ANTI-CORRUPTION AND BRIBERY. Each party represents that neither it nor anyone acting on its behalf has offered, given, requested or accepted any undue financial or other advantage of any kind in entering into this Agreement, and that it will comply with all applicable laws and regulations pertaining to corruption, competition and bribery in carrying out the terms and conditions of this Agreement.
8. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state in which the Services are performed.
9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and replaces any prior agreements or understandings, whether in writing or otherwise. This Agreement may not be modified or amended except by written agreement executed by both parties. In the event that any provision of this Agreement is determined to be void, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.
10. NOTICE. Any written notice provided under this Agreement may be sent via overnight mail, certified mail, hand delivery or electronic mail with delivery confirmation, to the individuals and addresses listed below.
11. BINDING. This Agreement shall inure to the benefit of and be binding upon the legal representatives and successors of the parties.
12. FUEL/TRANSPORTATION SURCHARGE. Like many other companies that are impacted by the price of gasoline, a rise in gasoline prices may necessitate a fuel surcharge. As such, the Company reserves the right to add a fuel surcharge to Customer's invoice for any increase in the cost of fuel as measured above the same time period in the prior year (by the National U.S. Average Motor Gasoline-Regular Fuel Price per

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Gallon Index reported by the U.S. Department of Energy). The surcharge may be adjusted monthly (up or down) with the price of gasoline.

13. DISCLAIMER. SOLitude is not responsible for the failure of any treatment, equipment installation, or other work that result from dam or other structural failures, severe weather and storms, flooding, or other acts of God that are outside of the control of SOLitude.

Customers understands and acknowledges that there are irrigation restrictions associated with many of the products used to treat lakes and ponds. The customer is responsible for notifying SOLitude in advance of the contract signing and the start of the contract if they utilize any of the water in their lakes or ponds for irrigation purposes. The customer accepts full responsibility for any issues that may arise from the irrigation of turf, ornamentals, trees, crops, or any other plants as a result of treated water being used by the customer for irrigation without the consent or knowledge of SOLitude.

Although there is rarely direct fish toxicity with the products used for treatment when applied at the labeled rate, or the installation and normal operation of the equipment we install, there is a risk under certain circumstances of significant dissolved oxygen drops. This risk is most severe in times of extremely hot weather and warm water temperatures, as these are the conditions during which dissolved oxygen levels are naturally at their lowest levels. Oftentimes lakes and ponds will experience natural fish kills under these conditions even if no work is performed. Every effort, to include the method and timing of application, the choice of products and equipment used, and the skill and training of the staff, is made to avoid such problems. However, the customer understands and accepts that there is always a slight risk of the occurrence of adverse conditions outside the control of SOLitude that will result in the death of some fish and other aquatic life. The customer also understands and accepts that similar risks would remain even if no work was performed. The customer agrees to hold SOLitude harmless for any issues with fish or other aquatic life which occur as described above, or are otherwise outside the direct control of the SOLitude, unless there is willful negligence on the part of SOLitude.

14. NONPERFORMANCE. In the case of any default on the part of the Company with respect to any of the terms of this Agreement, the Customer shall give written notice thereof, and if said default is not made good within (30) Thirty Days, the Customer shall notify the Company in writing that there has been a breach of the Agreement. The Company in case of such breach shall be entitled to receive payment only for work completed prior to said breach, so long as the total paid hereunder does not exceed the Contract sum.

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ACCEPTED AND APPROVED:

SOLITUDE LAKE MANAGEMENT, LLC.

CITY OF NEWBURGH – BROWN'S POND

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please Remit All Payments to:

**1320 Brookwood Drive Suite H
Little Rock AR 72202**

Customer's Address for Notice Purposes:

Please Mail All Contracts to:

**2844 Crusader Circle, Suite 450
Virginia Beach, VA 23453**

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SCHEDULE A – ANNUAL ANALYSIS MANAGEMENT SERVICES

Water Quality Sampling and Analysis

1. Water quality assessments are to be conducted at Brown's Pond throughout the season. Two (2) sampling stations will be established, a north station and a south station. All stations will be GPS-referenced.
2. Six (6) sampling events will be conducted in 2022: **May, June, July, August, September, and October**. All sampling will be conducted with a gas-powered motor boat.
3. At each station the following parameters will be measured on each date in situ:

Water Temperature	Dissolved Oxygen
pH	Water Clarity
Alkalinity	Total Hardness
4. In 2021, phycocyanin (a pigment produced by cyanobacteria) data will also be collected at both sites using a calibrated meter. At the deep-water station, a temperature/dissolved oxygen profile (2-foot intervals) will be performed. The following samples would be collected for analysis at a verified analytical laboratory:

Total Phosphorus	Total Nitrogen
Nitrate	Total Suspended Solids
Chlorophyll A	Conductivity
5. Results of the tests will be emailed two to three (2-3) weeks after field collection.

Phytoplankton Analysis:

1. Phytoplankton samples will be collected at each station on all sampling dates. Samples will be sand filtered and microscopically identified to genus level (natural units/ml), and enumeration will be performed at a SOLitude lab in Washington, NJ. Phytoplankton results will be provided with forty-eight (48) hours of collection.
2. Samples will be collected by the client (a week after the sampling event) and mailed overnight to SOLitude's lab for analysis during the following months: **May, June, July, August, September, October, November, and December**. Samples should be collected in 1-liter plastic jars, labeled with proper identification, and refrigerated during shipment. A visibility measurement taken with a secchi disk should accompany each sample.
3. Additional Phytoplankton testing and treatments if needed outside of the above scope of work are available and outlined on the additional separate Task Contract.

Microcystin Testing:

1. A water sample will be collected during each sampling event to measure for the algal toxin Microcystin, utilizing the Abraxis Algal Toxin Test Strip Kit. Results will be reported with twenty-four (24) hours of collection.

Service Reporting:

1. Customer will be provided with a monthly service report detailing all of the work performed as part of this contract.

Year-End Report:

1. A brief summary of the water quality results, treatments that were performed and recommendations for the following year will be provided in a year-end summary report.

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Permitting (when applicable):

1. SOLitude staff will be responsible for the following:
 - a. Obtaining any Federal, state, or local permits required to perform any work specified in this contract where applicable.
 - b. Attending any public hearings or meetings with regulators as required in support of the permitting process.
 - c. Filing of any notices or year-end reports with the appropriate agency as required by any related permit.
 - d. Notifying the Customer of any restrictions or special conditions put on the site with respect to any permit received, where applicable.

Customer Responsibilities (when applicable):

1. Customer will be responsible for the following:
 - a. Providing information required for the permit application process upon request.
 - b. Providing Certified Abutters List for abutter notification where required.
 - c. Perform any public filings or recordings with any agency or commission associated with the permitting process, if required.
 - d. Compliance with any other special requirements or conditions required by the local municipality.
 - e. Compliance and enforcement of temporary water-use restrictions where applicable.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for prescriptive site-specific water quality management and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.
5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the EPA and related state agencies for NPDES and FIFRA. Company will perform treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.

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6. Company will furnish the personnel, vehicles, boats, equipment, materials, and other items required to provide the foregoing at its expense.

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RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT
A PROPOSAL AND EXECUTE AN AGREEMENT WITH
SOLITUDE LAKE MANAGEMENT FOR PROFESSIONAL SERVICES FOR
ALGAE TREATMENT AT WASHINGTON LAKE AND BROWNS POND**

WHEREAS, the City of Newburgh needs to monitor water quality at Washington Lake and Browns Pond for potential harmful algal blooms; and

WHEREAS, Solitude Lake Management has submitted a proposal for professional services related to water quality monitoring and treatment for harmful algal blooms that may impact the water quality; and

WHEREAS, the funding for such services shall be derived from F.8389.0448.5022; and

WHEREAS, the City Council has reviewed the annexed proposal and has determined that such services are in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept a proposal and execute an agreement with Solitude Lake Management for professional services related to water quality monitoring and treatment for harmful algal blooms at Washington Lake and Browns Pond.



SERVICES CONTRACT

CUSTOMER NAME: City of Newburgh

SUBMITTED TO: Wayne Vradenburgh

CONTRACT DATE: February 14, 2022

SUBMITTED BY: Kevin Shank, Assistant Regional Manager/Environmental Scientist

Steven Gniadek, Regional Administrative Coordinator

SERVICES: 2022 Management of City of Newburgh Reservoirs (Washington Lake and Brown's Pond)

This agreement (the "Agreement") is made as of the date indicated above, and is by and between SOLitude Lake Management, LLC ("Solitude" or the "Company") and the customer identified above (the "Customer") on the terms and conditions set forth in this Agreement.

1. The Services. SOLitude will provide services at the Customer's property as described in Schedule A attached hereto:
2. PAYMENT TERMS. The Customer shall pay upon completion of each task. SOLitude shall invoice the Customer following completion of each Task Service.

Task 1: Additional Phytoplankton Analysis and Enumeration	\$210.00 per sample
Task 2: Copper Sulfate Treatment (91.5 acres, 0.3 ppm-upper 6')	\$3,155.00 per treatment
Task 3: Cutrine Plus Treatment (91.5 acres, 0.3 ppm-upper 4')	\$12,132.00 per treatment
Task 4: Notice of Intent (NOI) Client Responsibility	\$110.00*
(*paid directly to NYSDEC by client during November of each year)	

For any work completed or materials in storage on the customer's behalf at the end of each month, the company will invoice and the customer will be responsible for paying the percent of the total work completed as of that date, less any previous deposit paid. Should the work performed be subject to any local, state, or federal jurisdiction, agency, or other organization of authority for sales or other taxes or fees in addition to those expressly covered by this contract, customer will be invoiced and responsible for paying said additional taxes in addition to the fee above. Customer agrees to pay all invoices within thirty (30) days of invoice date. The Customer will be liable for any returned check fees and any collection costs, including reasonable attorney fees and court costs, for any invoices not otherwise timely paid, and

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interest at the rate of 1% per month may be added to all unpaid invoices. Company shall be reimbursed by the Customer for any non-routine expenses, administrative fees, compliance fees, or any other similar expense that are incurred as a result of requirements placed on the Company by the Customer that are not covered specifically by the written specifications of this contract.

3. TERM AND EXPIRATION. This Agreement is for a one-time service as described in the attached Schedule A. Any additional services will be provided only upon additional terms as agreed to by the parties in writing.

4. DISCLAIMER. SOLitude is not responsible for the failure of any treatment, equipment installation, or other work that result from dam or other structural failures, severe weather and storms, flooding, or other acts of God that are outside of the control of SOLitude.

Customer understands and acknowledges that there are irrigation restrictions associated with many of the products used to treat lakes and ponds. The customer is responsible for notifying SOLitude in advance of the contract signing and the start of the contract if they utilize any of the water in their lakes or ponds for irrigation purposes. The customer accepts full responsibility for any issues that may arise from the irrigation of turf, ornamentals, trees, crops, or any other plants as a result of treated water being used by the customer for irrigation without the consent or knowledge of SOLitude.

Although there is rarely direct fish toxicity with the products used for treatment when applied at the labeled rate, or the installation and normal operation of the equipment we install, there is a risk under certain circumstances of significant dissolved oxygen drops. This risk is most severe in times of extremely hot weather and warm water temperatures, as these are the conditions during which dissolved oxygen levels are naturally at their lowest levels. Oftentimes lakes and ponds will experience natural fish kills under these conditions even if no work is performed. Every effort, to include the method and timing of application, the choice of products and equipment used, and the skill and training of the staff, is made to avoid such problems. However, the customer understands and accepts that there is always a slight risk of the occurrence of adverse conditions outside the control of SOLitude that will result in the death of some fish and other aquatic life. The customer also understands and accepts that similar risks would remain even if no work was performed. The customer agrees to hold SOLitude harmless for any issues with fish or other aquatic life which occur as described above, or are otherwise outside the direct control of the SOLitude, unless there is willful negligence on the part of SOLitude.

While SOLitude Lake Management LLC makes every effort to thoroughly inspect the site before providing this contract proposal or beginning any work, it is possible, without fault or negligence, that unforeseen circumstances may arise, or that hidden conditions on the site might be found in the course of the performance of the contract work, which would result in additional time or material costs that exceed this contract pricing. Should this occur, the customer will be notified of these unforeseen circumstances or conditions and be responsible for the costs associated with remedying. By signing this agreement, the customer acknowledges that they have informed SOLitude Lake Management® of all known and

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relevant current site conditions that would be reasonable to expect could affect our ability to successfully complete the contract work.

5. INSURANCE AND LIMITATION OF LIABILITY. Solitude will maintain general liability and property damage insurance as necessary given the scope and nature of the Services. The Company will be responsible for those damages, claims, causes of action, injuries or legal costs to the extent of its own direct negligence or misconduct, and then only to an amount not to exceed the annual value of this Agreement. In no event will any party to this Agreement be liable to the other for incidental, consequential or purely economic damages.
6. FORCE MAJEURE. The Company shall not be liable for any delay in performing the Services, nor liable for any failure to provide the Services, due to any cause beyond its reasonable control.
7. ANTI-CORRUPTION AND BRIBERY. Each party represents that neither it nor anyone acting on its behalf has offered, given, requested or accepted any undue financial or other advantage of any kind in entering into this Agreement, and that it will comply with all applicable laws and regulations pertaining to corruption, competition and bribery in carrying out the terms and conditions of this Agreement.
8. GOVERNING LAW. This Agreement shall be governed and construed in accordance with the laws of the state in which the Services are performed.
9. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and replaces any prior agreements or understandings, whether in writing or otherwise. This Agreement may not be modified or amended except by written agreement executed by both parties. In the event that any provision of this Agreement is determined to be void, invalid, or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected.
10. NOTICE. Any written notice provided under this Agreement may be sent via overnight mail, certified mail, hand delivery or electronic mail with delivery confirmation, to the individuals and addresses listed below.
11. BINDING. This Agreement shall inure to the benefit of and be binding upon the legal representatives and successors of the parties.
12. FUEL/TRANSPORTATION SURCHARGE. Like many other companies that are impacted by the price of gasoline, a rise in gasoline prices may necessitate a fuel surcharge. As such, the Company reserves the right to add a fuel surcharge to Customer's invoice for any increase in the cost of fuel as measured above the same time period in the prior year (by the National U.S. Average Motor Gasoline-Regular Fuel Price per

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Gallon Index reported by the U.S. Department of Energy). The surcharge may be adjusted monthly (up or down) with the price of gasoline.

ACCEPTED AND APPROVED:

SOLITUDE LAKE MANAGEMENT, LLC.

CITY OF NEWBURGH

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please Remit All Payments to:

***1320 Brookwood Drive Suite H
Little Rock AR 72202***

Please Mail All Contracts to:

***2844 Crusader Circle, Suite 450
Virginia Beach, VA 23453***

Customer's Address for Notice Purposes:

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SCHEDULE A – TREATMENT SERVICES

In accordance with NYS DEC regulation, SOLitude Lake Management staff will act as the responsible applicator, and directly apply the algaecide as part of the application. The treatment vessel is equipped with onboard tank mixing of water and algaecide and is labeled to conform to all NYSDEC requirements. In 2022, an algaecide will be supplied by SOLitude Lake Management, with product being transferred to the reservoir on the day of treatment. Frequency of treatments will be based upon prevailing lake conditions but will only be conducted upon request of the client. The reservoir will be treated with copper sulfate labeled for aquatic use. Prior to application, pH, water clarity, dissolved oxygen and alkalinity will be recorded to assure suitable conditions exist for the application.

According to NYSDEC regulations, an Aquatic Use Permit is not required "for the use of copper sulfate for the purpose of algae control by a duly constituted water supply agency in its water supply waters." Region 3 policy states that a registered business can act on behalf of a duly constituted water supply agency without the Aquatic Pesticide Permit requirement. However, where Regulated Freshwater Wetlands encroach into the lake, a Freshwater Wetland Permit is required. This proposal includes SOLitude Lake Management filing for the Freshwater Wetlands Permit on behalf of the city of Newburgh if such permit is required.

Federal regulations require that all aquatic pesticide applications in New York comply with a State Pollution Discharge Elimination System General Permit (SPDES) whether or not an Aquatic Pesticide Use Permit is required or not.

Task 1: Additional Phytoplankton Analysis Sampling:

1. If the client is concerned of a potential algal bloom occurring based on visual conditions or clarity readings, they can send additional samples for analysis. Samples will be collected by Reservoir personnel and forwarded to Solitude Lake Management via overnight courier. Prices do not include the overnight courier expense which is the responsibility of the Client. Samples should be collected in 1 liter plastic jars, labeled with proper identification and refrigerated during shipment. A visibility measurement taken with a secchi disk should accompany each sample. Samples will be sand filtered, and microscopic identification to genus level (natural units/ml) and enumeration will be conducted at Solitude Lake Management's Washington, NJ location. Examination results will

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be reported to the City within 24 hours of receipt. Results will be summarized in chart and graph formats, including notes on population structure. Invoices will be submitted monthly following completion of the microscopic examination. Empty plastic bottles and shipping supplies will be boxed and returned to the Client, at their cost, if requested.

Task 2-4: Reservoir Algae Control:

1. Reservoir will be inspected on an on-call basis.
2. Algae found in the lake during each inspection shall be treated and controlled through the application of algaecides and aquatic surfactants as needed for control of the algae present at the time of service.
3. Water use restrictions will be posted in the vicinity at the time of treatment. The client is responsible for removal of any treatment postings upon expiration.

General Qualifications:

1. Company is a licensed pesticide applicator in the state in which service is to be provided.
2. Individual Applicators are Certified Pesticide Applicators in Aquatics, Public Health, Forestry, Right of Way, and Turf/Ornamental as required in the state in which service is to be provided.
3. Company is a SePRO Preferred Applicator and dedicated Steward of Water. Each individual applicator has been trained and educated in the water quality testing and analysis required for prescriptive site-specific water quality management and utilizes an integrated approach that encompasses all aspects of ecologically balanced management. Each applicator has received extensive training in the proper selection, use, and application of all aquatic herbicides, algaecides, adjuvants, and water quality enhancement products necessary to properly treat our Customers' lakes and ponds as part of an overall integrated pest management program.
4. Company guarantees that all products used for treatment are EPA registered and labeled as appropriate and safe for use in lakes, ponds, and other aquatic sites, and are being applied in a manner consistent with their labeling.
5. All pesticide applications made directly to the water or along the shoreline for the control of algae, aquatic weeds, or other aquatic pests as specified in this contract will meet or exceed all of the Company's legal regulatory requirements as set forth by the EPA and related state agencies for NPDES and FIFRA. Company will perform treatments that are consistent with NPDES compliance standards as applicable in and determined by the specific state in which treatments are made. All staff will be fully trained to perform all applications in compliance with all federal, state, and local law.

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6. Company will furnish the personnel, vehicles, boats, equipment, materials, and other items required to provide the foregoing at its expense.

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RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING AND ALLOCATING \$1,000,000.00 OF
AMERICAN RESCUE PLAN ACT OF 2021 FUNDING TO
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROGRAM**

WHEREAS, on March 11, 2021, President Joe Biden signed into law the American Rescue Plan Act of 2021 (ARPA) which includes Coronavirus State and Local Fiscal Recovery Funds (Fiscal Recovery Funds), providing federal payments to all state, local, tribal, and territorial governments in the United States that recipients may use, among other approved uses, to make necessary investments in water and sewer infrastructure; and

WHEREAS, the City of Newburgh proposes to allocate \$1,000,000.00 of ARPA funds received to the City of Newburgh Lead Service Line Replacement Program; and

WHEREAS, the City Council finds that authorizing and allocating \$1,000,000.00 of ARPA funds to support the replacement of lead water service lines is in the best interests of the health, safety and welfare of the residents of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager of the City of Newburgh be and he is hereby authorized to allocate \$1,000,000.00 of American Rescue Plan Act of 2021 funds to the City of Newburgh Lead Service Line Replacement Program; and that the City Manager is authorized to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary administer the Lead Service Line Replacement Programs funded thereby.

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION DESIGNATING A LIST OF QUALIFIED PLUMBING CONTRACTORS
TO PERFORM WORK IN CONNECTION WITH
THE CITY OF NEWBURGH LEAD SERVICE LINE REPLACEMENT PROGRAM**

WHEREAS, by Resolution No. 7-2018 of January 8, 2018, the City Council of the City of Newburgh authorized the City Manager to accept a New York State Department of Health Lead Service Line Replacement Program (“LSLRP”) Grant to facilitate the replacement of lead water service lines, and following a Request for Qualifications soliciting plumbing contractors interested in bidding on lead water service line replacement projects in the City of Newburgh funded by the LSLRP Grant, by Resolution No. 249-2018 of September 10, 2018, the City Council designated a list of plumbing contractors as qualified to bid on and perform work under the LSLRP Grant; and

WHEREAS, by Resolution No. 75-2019 of March 25, 2019 and Resolution No. 115-2019 of March 13, 2019, the City of Newburgh updated the list of designated plumbing contractors qualified to bid on and perform the work required by the LSLRP Grant; and

WHEREAS, the City proposes to allocate a portion of the American Rescue Plan funds to continue its Lead Service Line Replacement Program and issued a new solicitation for qualified plumbing contractors interested in bidding and performing work for future lead service line replacement projects; and

WHEREAS the City Council finds that designating a new list of qualified plumbing contractors to bid on and perform work for future lead service line replacement projects is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following plumbing contractors are designated as qualified to bid on and perform work for the City of Newburgh Lead Service Line Replacement Program Grant:

1. Jorrey Excavating, Inc.
2. Neighborhood Plumbing
3. Bradshaw Landscaping
4. Connolly Plumbing
5. Consorti Bros. Paving & Sealcoating, Inc.
6. Montana Construction Corp.
7. Spagnoli Excavating & Sons, Inc.
8. Black Rock Excavating
9. Valley Contracting, Inc.
10. Perfect Cut Landscaping, Inc./Hudson Valley Trucking
11. Vitek Plumbing Inc.
12. Valenza Plumbing Heating & AC, Inc.

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND ELIZABETH MCENANEY FOR
PROFESSIONAL GRANT CONSULTING SERVICES
RELATED TO THE DUTCH REFORMED CHURCH**

WHEREAS, in 2004, the City of Newburgh was awarded a New York State Office of Parks, Recreation and Historic Preservation grant for the Dutch Reformed Church (DRC) which requires a 50% City match and remains unspent preventing the City from applying for new and larger grants in support of the DRC; and

WHEREAS, the City of Newburgh wishes to enter into the attached agreement with Elizabeth McEnaney to provide professional grant consulting assistance to the City of Newburgh by working with the City staff to identify other existing preservation state or federal grants to support the restoration of the DRC; to then recommend a strategy for spending these grant funds and raising matching funds, as needed; and

WHEREAS, the cost of these services will not exceed \$5,000.00 and will be derived from A.8684.0448. Other Services; and

WHEREAS, this Council has determined that entering into this agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the agreement with Elizabeth McEnaney, in substantially the same form as annexed hereto with any other provision that Counsel may require, at cost not to exceed \$5,000.00 for grant consulting services related to the Dutch Reformed Church.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2022, by and between the **CITY OF NEWBURGH**, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the “**CITY**,” with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and **ELIZABETH MCENANEY**, an individual with principal offices at 2288 U.S. Route 9, Hudson, New York 12534 hereinafter referred to as “**VENDOR**.”

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and identified in Schedule A, (the “SERVICES”) which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter “Department Head”).

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall remain the property of VENDOR, except that CITY shall have VENDOR’s permission to make full use for the completion and implementation of the Project for which the material was prepared without compensation in addition to the amounts set forth in Article 3 and Schedule B of this Agreement. VENDOR shall have the affirmative obligation to notify CITY in a timely fashion of any and all limitations, restrictions or proprietary rights to such intellectual property and/or materials which may be applicable which would have the effect of restricting or limiting the exercise of

the CITY’s rights regarding same for any purpose outside the scope of the Project and its implementation.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning April 1, 2022, and ending December 31, 2022.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule B, which is attached to and is part of this Agreement. VENDOR shall submit to the CITY an itemized invoice for SERVICES rendered, as set forth in Schedule B, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within 30 days after the CITY receives Claimant’s Certification form. If the Claimant’s Certification form is objectionable, the CITY will notify VENDOR, in writing, of the CITY’S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

A not-to-exceed cost of \$5,000.00 has been established for the scope of SERVICES rendered by VENDOR. Costs in excess of such not-to-exceed cost, if any, may not be incurred without prior written authorization of the City Manager of the CITY, evidenced only by an Addendum to this Agreement, after consultation with the Department

Head. It is specifically agreed to by VENDOR that the CITY will not be responsible for any additional cost or costs in excess of the above noted not-to-exceed cost if the CITY'S authorization by the City Manager is not given in writing prior to the performance of the SERVICES giving rise to such excess or additional costs.

Any bills or invoices sent by VENDOR to the CITY more than six (6) months after services which are the subject of such billing have been rendered shall not be paid by the CITY and the CITY shall have no liability therefor.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a

waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

For failure to submit such letter of disclosure, or for a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for, or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if elected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment to or to take any other action provided for by law, in equity or pursuant to this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies under penalty of perjury, that to the best of their knowledge and belief:

A. The prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or indirectly, to any other bidder, proposer or to any competitor; and

C. No attempt has been made or will be made by VENDOR to induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means

and methods of performing the SERVICES and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. ASSIGNMENT AND SUBCONTRACTING

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the SERVICES to be performed by it under this Agreement, without the prior express written consent of the City Manager of the CITY. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any SERVICES provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the CITY shall be subject to all of the terms and conditions of this Agreement.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

The provisions of this clause shall not hinder, prevent, or affect any assignment by VENDOR for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the CITY to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. CITY, or any State and/or Federal auditors, and any other persons duly authorized by the CITY, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the CITY. VENDOR shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the CITY so that it may evaluate the reasonableness of the charges, and VENDOR shall make its records available to the CITY upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic

inspection, review and audit by the CITY, the State of New York, the federal government, and/or other persons duly authorized by the CITY. Such audits may include examination and review of the source and application of all funds whether from the CITY, State, the federal government, private sources or otherwise. VENDOR shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the SERVICES set forth herein and as hereinafter amended, VENDOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, insurance as may be required by law. Such policies are to be in the broadest form available on usual commercial terms and shall be written by insurers of recognized financial standing satisfactory to the CITY who have been fully informed as to the nature of the SERVICES to be performed. Where applicable, the CITY shall be an additional insured on all such policies with the understanding that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of VENDOR and not those of the CITY. Notwithstanding anything to the contrary in this Agreement, VENDOR irrevocably waives all claims against the CITY for all losses, damages, claims or expenses resulting from risks commercially insurable under this insurance described in this Article 13. The provisions of insurance by VENDOR shall not in any way limit VENDOR'S liability under this Agreement.

When applicable, VENDOR shall attach to this Agreement certificates of insurance evidencing VENDOR'S compliance with the following requirements:

Each policy of insurance shall contain clauses to the effect that (i) such insurance shall be primary without right of contribution of any other insurance carried by or on behalf of the CITY with respect to its interests, (ii) it shall

not be cancelled, including, without limitation, for non-payment of premium, or materially amended, without fifteen (15) days prior written notice to the CITY, directed to the City Manager, the Corporation Counsel and to the Department Head and the CITY shall have the option to pay any necessary premiums to keep such insurance in effect and charge the cost back to VENDOR.

To the extent it is commercially available, each policy of insurance shall be provided on an "occurrence" basis. If any insurance is not so commercially available on an "occurrence" basis, it shall be provided on a "claims made" basis, and all such "claims made" policies shall provide that:

A. Policy retroactive dates coincide with or precede VENDOR'S start of the performance of this Agreement (including subsequent policies purchased as renewals or replacements);

B. VENDOR will maintain similar insurance for at least six (6) years following final acceptance of the SERVICES;

C. If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

D. Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of

the SERVICES performed pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

In the event that any claim is made or any action is brought against the CITY arising out of the negligence, fault, act, or omission of an employee, representative, subcontractor, assignee, or agent of VENDOR either within or without the scope of his respective employment, representation, subcontract, assignment or agency, or arising out of VENDOR'S negligence, fault, act or omission, then the CITY shall have the right to withhold further payments hereunder for the purpose of set-off of sufficient sums to cover the said claim or action. The rights and remedies of the CITY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the purposes of set-off in sufficient sums to cover such loss or damage.

VENDOR agrees to defend, indemnify and hold the CITY harmless from any and all liability or claim for loss, cost, damage or expense (including, without limitation,

reasonable attorney fees and costs of litigation and/or settlement) due to any such loss or damage to any such CITY property described in this Article.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Agreement.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDOR'S obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any

unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 20. DISPUTE RESOLUTION

All disputes shall be heard in the Supreme Court of the State of New York, with venue in Orange County or if appropriate, in the Federal District Court with venue in the Southern District of New York, White Plains division.

ARTICLE 21. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 22. CURRENT OR FORMER CITY EMPLOYEES

VENDOR represents and warrants that it shall not retain the SERVICES of any CITY employee or former CITY employee in connection with this Agreement or any other agreement that said VENDOR has or may have with the CITY without the express written permission of the CITY. This limitation period covers the preceding three (3) years or longer if the CITY employee or former CITY employee has or may have an

actual or perceived conflict of interests due to their position with the CITY.

For a breach or violation of such representations or warranties, the CITY shall have the right to annul this Agreement without liability, entitling the CITY to recover all monies paid hereunder and VENDOR shall not make claim for or be entitled to recover, any sum or sums otherwise due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the CITY for such falsity or breach, nor shall it constitute a waiver of the CITY'S right to claim damages or otherwise refuse payment or to take any other action provided for by law or pursuant to this Agreement.

ARTICLE 23. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 24. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum to this Agreement, which Addendum shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

VENDOR

BY: _____
TODD VENNING
CITY MANAGER

BY: _____
ELIZABETH MCENANEY
TITLE:

Per Resolution No.:

DATE: _____

DATE: _____

APPROVED AS TO FORM:

Michelle Kelson
Corporation Counsel

Janice Gaston
City Comptroller

SCHEDULE A

SCOPE OF SERVICES

Objectives:

To review the status and scope of current preservation grants received for the Dutch Reformed Church (DRC); and to then recommend a strategy for spending these grant funds and raising matching funds, as needed.

Existing unspent grants include a \$50,000 grant from the New York State OPRHP (awarded in 2004, and requiring a 50 percent match from the city). This grant has been unspent for over 15 years, which prevents the city for applying for larger OPRHP grants in support of the DRC.

To work with the city's Grants Administrator to confirm whether there are any other existing preservation state or federal grants to support the restoration of the DRC.

Deliverables:

1. To define a scope of work to spend existing grant funds within the next 12-18 months

This will involve speaking with preservation architects and engineers (including Vertical Access and Ryan Biggs | Clark Davis who completed the last structural evaluation of the church in 2017) to prioritize the work that can be done with the existing grant money.

2. To propose a strategy for raising matching funds

The OPRHP grant requires a 50 percent match from the city. Potential sources for the match include: the National Trust for Historic Preservation's Johanna Favrot Fund for Historic Preservation (grants range from \$2,500 - \$15,000; deadline: March 1, 2022); Preserve New York (grants range from \$5,000 - \$14,000; deadline: April 15, 2022)

Timeline:

Immediate (4-8 weeks)

SCHEDULE B

FEES AND EXPENSES

The Vendor, will be compensated in a lump sum payment of \$5,000.00 upon completion of the services defined in Schedule "A".

Liz McEnaney
2288 U.S. Route 9
Hudson, New York 12534

Alexandra Church, AICP
Director of Planning and Development
City of Newburgh
123 Grand Street
Newburgh, New York 12550

February 15, 2022

Dear Ali:

RE: PRESERVATION GRANTS FOR DUTCH REFORMED CHURCH

Below is proposal to review the status of current preservation grants for the Dutch Reformed Church and to then recommend a strategy for spending these grant funds and raising matching funds.

If you have any questions or need additional information, please do not hesitate to contact me at 917-783-7427 or liz.mcenaney@gmail.com.

Objectives:

To review the status and scope of current preservation grants received for the Dutch Reformed Church (DRC); and to then recommend a strategy for spending these grant funds and raising matching funds, as needed.

Existing unspent grants include a \$50,000 grant from the New York State OPRHP (awarded in 2004, and requiring a 50 percent match from the city). This grant has been unspent for over 15 years, which prevents the city for applying for larger OPRHP grants in support of the DRC.

To work with the city's Grants Administrator to confirm whether there are any other existing preservation state or federal grants to support the restoration of the DRC.

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2. To propose a strategy for raising matching funds

The OPRHP grant requires a 50 percent match from the city. Potential sources for the match include: the National Trust for Historic Preservation's [Johanna Favrot Fund for Historic Preservation](#) (grants range from \$2,500 - \$15,000; deadline: March 1, 2022); [Preserve New York](#) (grants range from \$5,000 - \$14,000; deadline: April 15, 2022)

Timeline:

Immediate (4-8 weeks)

Fee:

\$5,000 fee.

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN
THE CITY OF NEWBURGH AND THE MID-HUDSON INTERPRETER SERVICE
PROGRAM OF TACONIC RESOURCES FOR INDEPENDENCE, INC.
FOR AMERICAN SIGN LANGUAGE/ENGLISH INTERPRETING SERVICES**

WHEREAS, to ensure that Community Development Block Grant (CDBG) public meetings are accessible to individuals with hearing impairments and to comply with Title II of the Americans with Disabilities Act, the City of Newburgh wishes to enter into the attached agreement with The Mid-Hudson Interpreter Service Program of Taconic Resources for Independence, Inc. to provide American Sign Language/English Interpreting services; and

WHEREAS, the cost of these services will be derived from CDBG contractual services lines CD1.8686.0400.8000.2021 and CD1.8686.0400.8000.2022; and

WHEREAS, this Council has determined that entering into this agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into an agreement with The Mid-Hudson Interpreter Service Program of Taconic Resources for Independence, Inc. to provide American Sign Language/English Interpreting services.



Providing effective communication and advocacy for the Deaf and Hard of Hearing since 1989

AGREEMENT FOR AMERICAN SIGN LANGUAGE/ENGLISH INTERPRETING SERVICES

This agreement entered into by and between Taconic Resources for Independence, Inc. and the program of Mid-Hudson Interpreter Service, hereinafter referred to as "MHIS" and City of Newburgh, hereinafter referred to as "Customer".

Dates of Service are from February 17, 2022 through December 31, 2023

****Be advised; timely return ensures retention of rates enclosed.**

SCOPE OF SERVICES

To provide effective communication utilizing but not limited to; Sign/Visual Language(s), Oral, and/or Tactile methods of interpreting services. MHIS is available seven (7) days a week. Requests shall be made with a recommended ten (10) days' notice. MHIS shall use its best effort to provide communication services when requested for any and all appointments. MHIS shall serve as the contact to all parties via various communication modes or at person-to-person meetings. MHIS shall process related documents and payment to the interpreters.

1. REQUEST INFORMATION

1.1 Customer shall request interpreting services directly to MHIS at 845-452-3913 extension 102. Emergency requests, or any request being less than three (3) full business days' notice, shall be made by contacting MHIS office telephone number as well as calling the on-call telephone number at 845-797-3799.

1.2 Prior to providing interpreting services, a fully executed contract must be on file at the MHIS office. A request for information to adequately prepare the agency and the interpreter(s) shall be required. The MHIS staff will request the following information including, but not limited to the date(s), beginning and approximate ending time(s), address and location(s), description of assignment, requester's name and contact information, communication mode, copies of any written materials, and knowledge of any audio and/or visual equipment to be used.

2. ASSIGNMENT LENGTH

2.1 The requested, scheduled, or reserved timeframe is the billable time, to the next full hour, when outside of the 2-hour minimum Appearance Fee. For assignment(s) exceeding the requested time, the interpreter(s) shall have the option to remain or depart at the designated ending time. Upon the interpreter(s) remaining beyond the initial requested end time, additional hourly rates shall be charged in accordance with the terms and conditions stated below. If the assignment ends early, the billable time is still the full reserved timeframe.

3. RATES

3.1 Rates shall be paid to MHIS in accordance with the following service schedule. A two (2) hour minimum Appearance Fee is required for all services, per interpreter. Hourly rates thereafter are per interpreter.

3.2 Weekday services (8:00am to 5:00pm): Ninety Dollars (\$90.00) per hour, or any part thereof, per interpreter.

3.3 Weeknights (5:00pm to 8:00am), Weekends & Holidays (8:00am to 5:00pm) services: One Hundred Dollars (\$100.00) per hour, or any part thereof, per interpreter.

Mid-Hudson Interpreter Service 82 Washington St. - Suite 214 Poughkeepsie, NY 12601

845.452.3913 voice 845.485.3196 fax 845.330.2083 VP 845.485.8110 TTY

www.taconicresources.org mhis@taconicresources.org

3.4 Weekends and Holidays (5:00pm to 8:00am) services: One Hundred Ten Dollars (\$110.00) per hour, or any part thereof, per interpreter.

3.5 Emergency Services and Rework Fees: Services requested and/or rework of services previously confirmed with less than three (3) full business days' notice shall incur an additional Twelve Dollars (\$12.00) per hour to above rates, per interpreter.

3.6 Travel: Coinciding with above rates, hourly fees for travel shall apply when travel is forty-five (45) clock minutes or more, one way, from the interpreter's starting point to the requested location.

3.7 Legal Rate: Should the assignment involve any legal proceedings or legal type meetings, all above rates would increase by Ten Dollars (\$10.00) per hour, per interpreter to allow for the specialized interpreting that would be involved in the assignment.

4. CANCELLATION POLICY - (Please call-845-797-3799 AND 845-452-3913 x 102)

4.1 Full payment, per interpreter, shall be made to MHIS for one day assignments, being one (1) day or less, when cancellation notice is given to the MHIS office with less than three (3) full business days prior to the scheduled assignment.

4.2 Full payment, per interpreter, shall be made to MHIS for multiple day assignments, being one (1) week or less, when cancellation notice is given to the MHIS office with less than five (5) full business days prior to the scheduled assignments.

4.3 Full payment, per interpreter, shall be made to MHIS for numerous assignments, being one (1) week or longer, when cancellation notice is given to the MHIS office with less than ten (10) full business days prior to the scheduled assignment.

4.4 Weather: In the event of inclement weather cancellations, the Customer will be charged for the entire scheduled time if the cancellation is not made to MHIS by the Customer prior to interpreter leaving their base for the scheduled assignment. MHIS reserves the right to cancel in event of inclement weather or catastrophic event, and in that event MHIS shall have no liability under this contract beyond providing similar substitute Services at another mutually agreeable time and place.

4.5 MHIS reserves the right to charge for the full assignment time upon untimely notices. Upon the interpreter(s) arrival on site for the assignment and if any party does not arrive for any reason after thirty (30) minutes of the starting time, the interpreter(s) shall have the option to depart and charge for the entire scheduled time. When replacement work is found during cancelled assignment time for the interpreter(s), invoicing may reflect an adjustment.

5. BILLING

5.1 MHIS will invoice customer who will be responsible for full payment of invoice to MHIS. MHIS will not split invoices between requesting customer and other entities. All payments shall be made by check and payable to Mid-Hudson Interpreter Service. MHIS invoice numbers shall be noted on all checks. Send payment to Attention: Financial Coordinator. Payment shall be due upon receipt. A Rebilling Fee of Ten Dollars (\$10.00) per each month delinquent will be applied to all invoices that are 30 days past due. Customer shall be liable for all legal and collection fees.

5.2 Surcharges to Consumer: The cost of Interpreting Services cannot be billed or transferred in any way to the consumer as per Title II of the Americans with Disability Act II-3.5400. States as follows: "Surcharges: Although compliance may result in some additional cost, a public entity may not place a surcharge only on particular individuals with disabilities or groups of individuals with disabilities to cover these expenses."

6. INTERPRETERS – All Private Practice Interpreters (PPI) set their own availability with our agency.

6.1 PPIs shall be selected at the discretion of the MHIS staff. Customer will be notified prior to confirming any assignment if more than one interpreter will be required to accommodate a request. The decision to use a team rather than an individual interpreter is based on a number of factors, including, but not limited to: the length and/or complexity of the assignment, the unique needs of the persons being served, the physical and emotional dynamics of the setting, and avoidance of repetitive stress injuries (RSIs) for interpreters.

6.2 In the event that Customer requires that interpreters provide evidence of or undergo specific clearance procedures (e.g. medical testing, physical exams, fingerprinting, background checks, etc.) as an additional condition to performing services pursuant to this Agreement, (i) the requirement for such clearance procedures shall be disclosed not less than sixty (60) days in advance to MHIS, and (ii) the cost of any such procedures shall be at the sole expense of Customer and not MHIS or the individual interpreter.

6.3 INTERN / MENTOR / MENTEE PROGRAM

INTERNS - Occasionally TRI/MHIS will work with college students studying to become Sign Language Interpreters by allowing them to intern with our agency by shadowing Interpreters on our roster. These interns would be passively observing scheduled interpreters during appointments.

MENTEE/MENTOR - Occasionally TRI/MHIS will work with college students studying to become Sign Language Interpreters. These students are required to complete a number of practical interpreting hours while supervised by a Certified Interpreter acting as their Mentor. The student would be actively interpreting while under the guidance and supervision of their assigned Mentor.

Interns and Mentees working with MHIS and the MHIS office personnel strictly follow and adhere to HIPAA, Parent's Bill of Rights, RID Code of Ethics and confidentiality guidelines regarding the privacy of all information whether verbal, written or digital from their Educational Institution as well as MHIS.

There is no additional fee associated with this program should you Opt In. Indicate preference on signature page.

7. CONFIDENTIALITY

7.1 All PPIs working with MHIS and the MHIS office personnel strictly follow and adhere to HIPAA, Parent's Bill of Rights, RID Code of Ethics and confidentiality guidelines regarding the privacy of all information whether verbal, written or digital.

8. CONTRACT TERMS

8.1 Policies are subject to change. Any changes in the terms and conditions of this contract shall be subject to written approval by all respective parties acknowledging acceptance.

9. TERMINATION OF CONTRACT

9.1 NON-COMPETE: This agreement may be terminated by either party upon thirty (30) days written notice. Customer agrees not to privately contract and/or hire any of the interpreter(s) that were previously provided by MHIS during the period of this agreement and for one year after termination of this agreement.

9.2 The completion and return of this contract constitutes agreement to follow its policies. This Agreement shall be effective for an initial period of one (1) year and may renew for subsequent terms of one (1) calendar year in duration with a fully executed Renewal Agreement, unless terminated by either party as provided in this Agreement or a change is submitted in writing by MHIS.

10. INDEMNITY

10.1 Each party shall indemnify and hold harmless the other party, its directors, officers, and employees from any and all claims or other loss that may arise from or are in connection with the indemnifying party's negligence, willful misconduct or breach of this Agreement, except to the extent that such loss was caused by the negligence, willful misconduct, or breach of the other party.

11. TRAINING

11.1 As a customer of MHIS we offer educational trainings free of charge to your employees. Our trainings are focused on creating an understanding of working with the Deaf/Hard of Hearing community and how the Americans with Disabilities Act (ADA) is applicable to them. Should you be interested in these trainings, please reach out to our Program Director at 845-452-3913 x103 or J.byernes@taconicresources.org .

I have read, understand, and hereby agree to all terms and conditions of the contract stated within.

Authorized Customer Signature

Date

Print Name & Title

Email address

Company/Agency

Invoices: Attention to (if different than above)

Address

Phone

Town/City, State, Zip Code

Please indicate your Intern / Mentee preference below from item #6.3:

_____ Opt In – We welcome student Interns

_____ Opt Out – We prefer not to have student Interns

Below this line is for TRI/MHIS administration

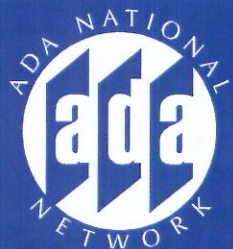
Licia A. Valteau - MHIS Contract Manager

Date

Lisa Tarricone – Executive Director

Date

Rev 6/2021



National Network

Information, Guidance and Training on the
Americans with Disabilities Act

Call us toll-free
1-800-949-4232 V/TTY
Find your regional center at
www.adata.org

Title II and Title III Revised Regulations

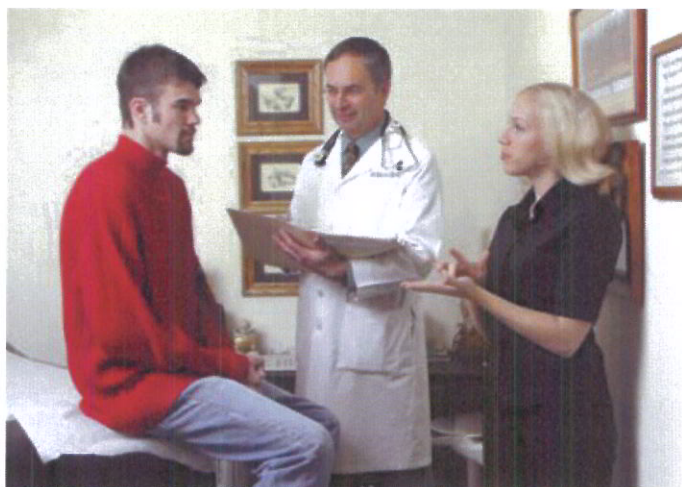
Effective Communication

The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II and Title III regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities (state and local government entities) and Title III private businesses (a.k.a. places of public accommodation) to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. (§35.104, §35.160, §36.104, §36.303) This includes an obligation to provide effective communication to companions who are individuals with disabilities. The term "companion" means a family member, friend, or associate with whom the public entity or private business would typically communicate.

Providing Auxiliary Aids and Services

Examples of common auxiliary aids and services include qualified sign language interpreters in person or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones or equally effective telecommunications devices; videotext displays; qualified readers; taped texts; audio recordings; Brailled materials and displays;

screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; and accessible electronic and information technology.



The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. A private business should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the private business, provided that the method chosen results in effective communication. However, public entities must give primary consideration to the request of the individuals with disabilities.

Visit adata.org or call 1-800-949-4232 V/TTY to contact your regional ADA Center.

- To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
- A public entity or private business is financially responsible for the cost of the auxiliary aid or service provided unless it can demonstrate that it would be an undue financial burden in light of the overall financial resources of the entire entity, including any parent corporation if applicable. It cannot impose a surcharge on an individual with a disability to cover the costs of the auxiliary aid or service provided. Even if it is determined that a particular auxiliary aid or service is an undue financial burden, the entity must still provide effective communication utilizing a different auxiliary aid or service.

Sign Language Interpreters

Public entities and private businesses cannot require an individual with a disability to bring another individual to interpret for him or her. A public entity or private business shall not rely on an adult accompanying an individual to interpret or facilitate communication, except:

- In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- When the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for assistance is appropriate under the circumstances.

A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

Telecommunications

When a public entity or private business uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and relay services, including Internet-based relay systems. A public entity or private business shall respond to telephone calls from a relay service in the same manner that it responds to other telephone calls. A public entity or private business may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

A public entity or private business that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using their equipment on more than an incidental convenience basis shall make available accessible public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

The contents of this factsheet were developed under a grant from the Department of Education (DOE), NIDRR grant # H133A110017. However, those contents do not necessarily represent the policy of the DOE, and you should not assume endorsement by the Federal Government.

Visit adata.org or call **1-800-949-4232** V/TTY to contact your regional ADA Center.
May be reproduced and distributed freely with attribution to ADA National Network (www.adata.org).

Am I required to provide a Sign Language Interpreter?

Title III of the Americans with Disabilities Act (ADA) gives rights of equal access to places of public accommodation. These places include, but are not limited to, medical offices, optometrists, dentists, banks, legal offices, insurance agencies, museums, parks, libraries, day care centers, recreational programs, social service agencies and private schools. It covers both profit and non-profit organizations, regardless of size. Compliance with the law to provide effective communication may include the provision of sign language interpreting.



To see how the
**Americans with
Disabilities Act**
applies to **YOUR** business,
see our website at
www.taconicresources.org/mhis.htm

Become a fan on Facebook:
facebook.com/mhisny

24 Hour Emergency Resources:

**Emergency Sign Language
Interpreter Service:**
(845) 797-3799

**Family Services'
Battered Women's Services:**
(845) 485-5550

**Family Services' Rape Crisis/
Crime Victims Hotline:**
(845) 452-7272

Dutchess County HELPLINE:
(845) 485-9700

**All of our services are
safe and confidential**



**Mid-Hudson
Interpreter
Service**

A program of
Taconic Resources for Independence, Inc.

**Providing
interpreting services
and services for the
Deaf and Hard of Hearing**
Interpreting services provided
24 hours a day
7 days a week



**82 Washington Street
Suite 214
Poughkeepsie, NY 12601
(845) 452-3913 (VOICE)
(845) 345-8416 (VP)
(845) 485-8110 (TTY)
(845) 485-3196 (FAX)**

mhis@taconicresources.org
www.taconicresources.org/mhis.htm

Frequently Asked Questions

Couldn't Deaf people just ask their family or friends to interpret for them?

- Sign language interpreting is more than the ability to fingerspell or converse in sign.
- Interpreting is a complex process that requires a high degree of linguistic, cognitive, and technical skills.
- To ensure the correct understanding of a message requires fluency in both languages and extensive training.
- Professional sign language interpreters follow a Code of Professional Conduct.

For this reason, family members, friends, or others who may know sign are not appropriate or acceptable substitutes for a professional interpreter.

Are there other types of interpretation?

Yes. Interpreters work within a variety of settings and situations, and therefore need to possess a high level of skills and knowledge. Often interpreters will specialize in certain fields requiring additional training and credentials. Some specialties include: certified Deaf Interpreters, Tactile interpreting, Oral (non-signing Deaf person) interpreting, and Signed Exact English.

Why Use Mid-Hudson Interpreter Service?

Interpreting

- Quality American Sign Language(ASL)/English interpreting services to facilitate effective communication.
- Nationally certified/qualified ASL/English interpreters with the background and experience in a variety of settings, including medical, business, legal, educational, counseling, public forums, and more.
- Appropriate selection of interpreters to meet the specific needs of language, settings, and individuals involved.
- Assurance that your organization is in compliance with the Americans with Disabilities Act in providing reasonable accommodations.

Other Services

Our staff can provide trainings in the following areas:

- Satisfying effective communication needs
- Hiring a Deaf/Hard of Hearing person
- Working with a Deaf/Hard of Hearing person
- Communicating using an interpreter
- Applying the ADA to your business

How Do I Schedule An Interpreter?

Simply call (845) 452-3913 x102 or go to www.taconicresources.org/mhis.htm and we can assist you in scheduling an interpreter. This is a fee for service program.

All our services are safe and confidential



This project is supported by Grant No. 2006-FW-AX-K013 awarded by the Office on Violence Against Women, U. S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND THE TERM
OF A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$30,000.00
WITH CATHOLIC CHARITIES OF ORANGE, SULLIVAN & ULSTER FOR
THE ALLOCATION OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
FUNDING TO SUPPORT FOOD DISTRIBUTION PROGRAMS AND SERVICES**

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant (“CDBG”) FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security (“CARES”) Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include infrastructure assessment for internet access, emergency food service in the form of assistance to non-profit organizations engaged in food distribution programs and services, child care services, and neighborhood service programming for socially distant activities; and

WHEREAS, by Resolution No. 33-2021 of February 22, 2021, the City Council authorized a sub-recipient grant agreement with Catholic Charities of Orange, Sullivan & Ulster in the amount of \$30,000.00 to support and expand food distribution programs and services to City of Newburgh residents in need; and

WHEREAS, sub-recipient grant term requires an extension from December 31, 2021 to June 30, 2022 in order for Catholic Charities of Orange, Sullivan & Ulster to complete the scope of services and reimbursement process; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to extend the term of the sub-recipient grant agreement with Catholic Charities of Orange, Sullivan & Ulster until June 30, 2022;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into an extension of the term of sub-recipient grant agreement with Catholic Charities of Orange, Sullivan & Ulster from December 31, 2021 to June 30, 2022.

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CATHOLIC CHARITIES ORANGE SULLIVAN ULSTER
AMENDMENT NO. 1**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT AMENDMENT NO. 1 ("Amendment No. 1") is made as of the ____ day of _____, 2022, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Catholic Charities Orange Sullivan Ulster, a non-profit corporation ("Subrecipient"), with an address of 27 Matthews Street, Goshen, NY 10924.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The City and the Subrecipient are parties to a Subrecipient Grant Agreement dated May 20, 2021 (the "Agreement") for the purposes of providing services to low/moderate income persons as set forth in Exhibit A of the Agreement.
- D. Section 1 of the Agreement provides that the term of the Agreement shall continue in force and effect until December 21, 2021 and the City and the Subrecipient wish to extend the term of the Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

- 1. The Term of Agreement set forth in Section 1 of the Agreement shall be extended to June 30, 2022 unless earlier terminated in accordance with Section 8 of the Agreement.
- 2. All other terms and conditions set forth in the Agreement shall remain in full force and effect.

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Signature Page Amendment No. 1

City of Newburgh with Catholic Charities Orange Sullivan Ulster

Food Security and Emergency Income Payments in the City of Newburgh in Response to the Coronavirus

IN WITNESS WHEREOF, the City and Subrecipient have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2022

CITY OF NEWBURGH

By: _____

Name: Todd Venning

Title: City Manager

DATED: _____, 2022

Catholic Charities Orange Sullivan Ulster

By: _____

Name:

Title:

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2022, before me personally appeared Todd Venning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this ____ day of _____, in the year 2022, before me personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

**COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT
BETWEEN THE CITY OF NEWBURGH AND
CATHOLIC CHARITIES ORANGE SULLIVAN ULSTER**

THIS COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT ("Agreement") is made as of the May 20, 2021, by and between the CITY OF NEWBURGH, a municipal corporation with an address of 83 Broadway, Newburgh, New York 12550 ("City") and Catholic Charities Orange Sullivan Ulster, a _____ non-profit corporation ("Subrecipient"), with an address of 27 Matthews St. Goshen NY 10924.

RECITALS

- A. The City has entered into various funding agreements with the United States Department of Housing and Urban Development ("HUD"), which agreements provide funds ("CDBG Funds") to the City under the Federal Housing and Community Development Act of 1974 (42 USC Sections 5301 et seq.), as amended from time to time (the "Act"), and the regulations promulgated thereunder 24 CFR Sections 570 et seq. ("Regulations"). The Federal award date of the CDBG Funds provided subject to this Agreement is April 2, 2020. The Federal Award Number ("FAIN") for the CDBG Funds provided subject to this Agreement B-20-MW-36-0119. The Catalog of Federal Domestic Assistance ("CFDA") for the CDBG Funds provided subject to this Agreement is 14.218.
- B. The Act provides that the City may grant or loan the CDBG funds to nonprofit organizations for certain purposes allowed under the Act.
- C. The Subrecipient proposes to provide various services to low/moderate income persons as set forth in Exhibit A (Scope of Work).

NOW, THEREFORE, the parties hereto agree as follows:

SECTION 1 TERM OF AGREEMENT

- 1. Unless earlier terminated in accordance with Section 8 of this Agreement, this Agreement shall continue in force and effect until December 31, 2021.

SECTION 2 SUBRECIPIENT OBLIGATIONS

- 1. Use of CDBG Funds. Subrecipient hereby agrees to use the CDBG funds provided to Subrecipient solely for the project pursuant to all of the terms and conditions of this Agreement. The project is more particularly set forth in Exhibit A attached hereto and incorporated herein by reference. The CDBG funds shall be used solely to reimburse the actual expenses incurred by Subrecipient for the project as set forth in the "Budget" attached hereto as Exhibit B and incorporated herein by reference. The City may approve minor changes to the budget that do not exceed the maximum amount in Section 3 of this Agreement.

2. Representation and Warranties. Subrecipient hereby represents and warrants to the City as follows:
 - a. Subrecipient has read and is familiar with all of the terms and provisions of the Act and the Regulations applicable to Subrecipient.
 - b. Subrecipient is a non-profit organization permitted to receive CDBG funds under the Act and the Regulations.
 - c. The use of the facility, the project, and the expenses to be reimbursed by the CDBG funds, as described in the budget, are permitted uses of CDBG funds under the Act and the Regulations.
3. Compliance with Law. Subrecipient shall perform the project and operate the facility in accordance with all ordinances, resolutions, statutes, rules, and Regulations of the City and any Federal, State or local governmental agency having jurisdiction in effect at the time service is rendered, including, but not limited to the Act and the Regulations. Particularly, Subrecipient shall comply with the requirements and standards of the following:
 - a. OMB Circular No. A-122 "Cost Principles for Non-Profit Organizations" or OMB Circular No. A-21 "Cost Principles for Educational Institutions," as applicable;
 - b. All Federal laws and regulations described in 24 CFR Part 84 and Subpart K of 24 CFR Part 570, including all affirmative action requirements set forth therein, but excluding the City's environmental responsibilities under 24 CFR Section 570.604 and the City's responsibility for initiating the review process under 24 CFR Part 52; and
 - c. If Subrecipient is a religious organization, as defined by the Regulations, all conditions prescribed by HUD for the use of CDBG funds by religious organizations shall pertain.
 - d. OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations."
4. Licenses, Permits, Fees and Assessments. Subrecipient shall obtain, at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the project and the operation of the facility.
5. Personnel and Participant Conditions.
 - a. Civil Rights
 - i. Compliance. Subrecipient agrees to comply with City and State civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order

11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

- ii. Nondiscrimination. Subrecipient will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provisions of this nondiscrimination clause.
- iii. Land Covenants. This Agreement is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, part I. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
- iv. Section 504. Subrecipient agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 721) that prohibits discrimination against the handicapped in any federally assisted program.

b. Affirmative Action

- i. EO 11246. Subrecipient, if applicable, will comply with Executive Order 11246, as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR Chapter 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction Agreements. As specified in Executive Order 11246 and the implementing regulations, contractors, and subcontractors on federal or federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.
- ii. Women- and Minority-Owned Businesses (W/MBE). Subrecipient will use its best efforts to afford minority and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business

at least fifty-one (51) percent owned and controlled by minority group members or women. For the purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. Subrecipient may rely on written representations by Subrecipients regarding their status as minority and female business enterprises in lieu of an independent investigation.

- iii. Access to Records. Subrecipient shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.
- iv. Notifications. Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. EEO/AA Statement. Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- vi. Subcontract Provisions. Subrecipient will include the provisions of Paragraphs VIII A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each sub-Subrecipient or vendor.

c. Employment Restrictions

- i. Prohibited Activity. Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for political activities; sectarian or religious activities; lobbying, political patronage, and nepotism activities.
- ii. OSHA. Where employees are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety.

d. "Section 3" Clause

- i. Compliance. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement and binding upon the City, the Subrecipient and any sub-Subrecipients. Failure to fulfill these requirements shall subject the City, the

Subrecipient and any sub-Subrecipients, their successors and assigns, to those sanctions specified by the agreement through which federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this agreement: The work to be performed under this Agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and Agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the areas of the project.

- ii. Subrecipient certifies and agrees that no contractual or other disability exists which would prevent compliance with the requirements.
- iii. Notifications. Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- iv. Subcontracts. Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the sub-Subrecipient is in violation of Regulations issued by the grantor agency. The Subrecipient will not subcontract with any sub-Subrecipient where it has notice of knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the sub-Subrecipient has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- e. Environmental Requirements. Lead Based Paint. In accordance with 24 CFR Part 570.608, Subrecipient shall be prohibited from using lead-based paint in residential structures rehabilitated with Community Development Block Grant funds. Lead-based paint is any paint containing more than five- tenths of one percent (5/10 of 1%) lead by weight in the total non-volatile content of liquid paints or in the dried film of paint already applied.
- f. Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the obligations of the other.

SECTION 3 DISBURSEMENT OF FUNDS

1. **Maximum Amount of CDBG Funds.** The maximum amount of CDBG funds to be provided to Subrecipient is \$30,000.00 in the form of a grant. Subrecipient hereby acknowledges that the City cannot guarantee that the CDBG funds will be received from HUD. The City's obligation to fund the work hereunder is limited to the availability of CDBG funds from HUD. If the CDBG funds are not forthcoming from HUD for any reason, the City shall not have any obligation to fund the work through any other source of funds.
2. **Maximum Amount of General Funds.** Not applicable.
3. **Termination of Fund Obligation.** The services to be provided under this Agreement may be terminated without cause at any point in time in the sole and exclusive discretion of City. In this event, City shall compensate the Subrecipient for all outstanding costs incurred for work satisfactorily completed as of the date of written notice thereof. Subrecipient shall maintain adequate logs and timesheets in order to verify costs incurred to date.
4. **Method of Payment- CDBG Funds.** Unless otherwise specified in Exhibit A, not more frequently than monthly and at least quarterly, Subrecipient may submit to the Agreement Officer an invoice, in a form and/or manner acceptable to the City, setting forth the amounts actually expended by Subrecipient for the project; provided that said expenses are included in the budget (Exhibit B) and performance standards have been met. Said invoice shall, at a minimum, set forth each budget category for which reimbursement is sought, a description of the expense, the total budgeted amount for the category, the amount requested to be reimbursed for each budget category, and the total amount expended for each budget category to date. Said invoice shall be accompanied with such additional supporting information as requested by the City, including, but not limited to, paid receipts for each expense. To the extent the CDBG funds actually have been received from HUD, the City shall pay Subrecipient for all expenses stated on the invoice that are approved by City pursuant to this Agreement no later than the thirtieth day after the invoice is received.
5. **Method of Payment - General Funds, if applicable.** City shall pay Subrecipient an amount not to exceed the total sum noted in Section 3.2 for services to be performed. The City shall make payments for services satisfactorily performed within 30 days after said services are invoiced. City shall not pay any additional sum for any expense or cost whatsoever incurred by the Subrecipient in rendering services pursuant to this Agreement.
6. **Program Income.** Any program income, as such term is defined in the regulations, received by Subrecipient shall be retained by Subrecipient, so long as the amount held does not exceed Subrecipient's projected cash needs for CDBG activities. The program income received by Subrecipient shall solely be used for the project or for the purpose of operating the facility. All provisions of this Agreement shall apply to activities funded by program income. All program income shall be expended by Subrecipient before the City is obligated to advance any other CDBG funds to Subrecipient under this agreement.

7. Separation of Funds. The Subrecipient shall certify that Subrecipient's financial system is in accordance with the standards specified in OMB Circular 110, or 24 CFR Part 84.
8. Indirect Costs. Not applicable.

SECTION 4 PERFORMANCE SCHEDULE

1. Schedule of Performance. Subrecipient shall commence, prosecute and complete the project within the time periods established in the "Scope of Work" as referenced in Exhibit A.
2. Reversion of Assets. Upon the expiration or sooner termination of this Agreement, Subrecipient shall (i) transfer to the City any and all CDBG funds and program income on hand (ii) any accounts receivable attributable to the use of CDBG funds or program income; and (iii) if any CDBG funds or program income was used by Subrecipient to improve or acquire real property and said CDBG funds or program income was in excess of Twenty-Five Thousand Dollars (\$25,000), Subrecipient shall either (a) use said real property to meet one of the national objectives specified in 24 CFR Section 570.208 for a period of five (5) years after the termination or sooner expiration of this Agreement or (b) dispose of the real property and reimburse the City in an amount (together with any amounts previously repaid to the City) that is equal to the fair market value of the real property times a fraction, the numerator of which is equal to the amount of CDBG funds and/or other program income used to acquire or improve the property and denominator of which is equal to the fair market value of the real property immediately after the real property was acquired or improved with said funds.

SECTION 5 COORDINATION OF WORK

1. Representative of Subrecipient. The Executive Director is hereby designated as being the representative of Subrecipient authorized to act in its behalf with respect to this Agreement and make all decisions in connection therewith.
2. Contract Officer. Contract Officer shall be the City's CDBG Manager or such person as may be designated by the City Manager. It shall be Subrecipient's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Subrecipient shall refer any decisions that must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
3. Prohibition Against Subcontracting or Assignment. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Subrecipient, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this

Agreement shall be void. No approved transfer shall release Subrecipient or any surety of Subrecipient of any liability hereunder without the express consent of City.

4. Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Subrecipient, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Subrecipient's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Subrecipient shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with the role. Subrecipient shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Subrecipient in its business or otherwise of a joint venture or a member of any joint enterprise with Subrecipient.
5. Conflict of Interest. The Subrecipient agrees to abide by the provisions of 24 CFR 570.611 with respect to conflicts of interest, and covenants that it presently has no financial interest and shall not acquire any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement. The Subrecipient further covenants that in the performance of this Agreement no persons having such a financial interest shall be employed or retained by the Subrecipient hereunder. These conflict of interest provisions apply to any person who is an employee, agent, Subrecipient, officer, or elected official or appointed official of the City, or of any designated public agencies or subrecipients which are receiving funds under the CDBG Entitlement program.
6. The Subrecipient hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or co-operative agreement;
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contractor, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
 - c. It will require that the language of paragraph (d) of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and

- d. Lobbying Certification - Paragraph d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1353, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

SECTION 6 INSURANCE REQUIREMENTS

1. Insurance. Before beginning any work under this Agreement, Subrecipient, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by Subrecipient and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Subrecipient shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Subrecipient shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Subrecipient's bid. Subrecipient shall not allow any subcontractor to commence work on any subcontract until Subrecipient has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS AGREEMENT PRIOR TO EXECUTION. Subrecipient shall maintain all required insurance listed herein for the duration of this Agreement.
2. Workers' Compensation. Subrecipient shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Subrecipient. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000) per accident. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Subrecipient, its employees, agendas, and subcontractors.
 - a. Submittal Requirements. To comply with Subsection 6.2, Subrecipient shall submit the following:
 - i. Certificate of Liability Insurance in the amounts specified in the section; and
 - ii. Waiver of Subrogation Endorsement as required by the section.
 - b. Commercial General and Automobile Liability Insurance.
 - i. General Requirements. Subrecipient, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not

less than one million dollars (\$1,000,000) and automobile liability insurance for the term of this Agreement in an amount not less than one million dollars (\$1,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

ii. Additional Requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

[A] The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

[B] City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Subrecipient; or automobiles owned, leased, hired, or borrowed by the Subrecipient.

[C] Subrecipient hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Subrecipient agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

[D] For any claims related to this Agreement or the work hereunder, the Subrecipient's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Subrecipient's insurance and shall not contribute with it.

iii. Submittal Requirements. To comply with Subsection 6.3 Subrecipient shall submit the following:

[A] Certificate of Liability Insurance in the amounts specified in the section;

[B] Additional Insured Endorsement as required by the section;

[C] Waiver of Subrogation Endorsement as required by the section; and

[D] Primary Insurance Endorsement as required by the section.

c. Professional Liability Insurance.

- i. General Requirements. Subrecipient, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than one million dollars (\$1,000,000) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.
 - ii. Claims-Made Limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - [A] The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - [B] Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 - [C] If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Subrecipient shall purchase an extended period coverage for a minimum of 5 years after completion of work under this Agreement.
 - [D] A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.
 - iii. Additional Requirements. A certified endorsement to include contractual liability shall be included in the policy.
 - iv. Submittal Requirements. To comply with Subsection 6.3, Consultant shall submit the Certificate of Liability Insurance in the amounts specified in the section.
- d. All Policies Requirements.
- i. Verification of Coverage. Prior to beginning any work under this Agreement, Subrecipient shall furnish City with complete copies of all certificates of insurance delivered to Subrecipient by the insurer, including complete copies of all endorsements attached to the policies. All copies of certificates of insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Subrecipient beginning work, it shall not waive the Subrecipient's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
 - ii. Deductibles or Self-Insured Retentions. Subrecipient shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before

beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Subrecipient shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- iii. Wasting Policies. No policy required by this Section 6 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- iv. Endorsement Requirements. Each insurance policy required by Section 6 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- v. Subcontractors. Subrecipient shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- vi. Remedies. In addition to any other remedies City may have if Subrecipient fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Subrecipient's breach:

[A] Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

[B] Order Subrecipient to stop work under this Agreement or withhold any payment that becomes due to Subrecipient hereunder, or both stop work and withhold any payment, until Subrecipient demonstrates compliance with the requirements hereof; and/or

[C] Terminate this Agreement.

SECTION 7 ADMINISTRATIVE REQUIREMENTS

1. Financial Management.

- a. Accounting Standards. Subrecipient agrees to comply with 24 CFR Part 84 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
- b. Cost Principles. Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles

for Educational Institutions," as applicable for all costs incurred whether charged on a direct or indirect basis.

2. Documentation and Record-Keeping

- a. Records to be Maintained. Subrecipient shall maintain all records required by the Federal regulations specific in 24 CFR Part 570.506, and that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
 - i. Records providing a full description of each activity undertaken;
 - ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program set forth in 24 CFR 570.208;
 - iii. Records required determining the eligibility of activities;
 - iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
 - vi. Financial records as required by 24 CFR Part 570.502, and Part 84; and
 - vii. Other records necessary to document compliance with Subpart K of 24 CFR 570.
 - b. Retention. Subrecipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of four (4) years after the termination of all activities funded under this agreement, or after the resolution of all Federal audit findings, whichever occurs later. Records for non-expendable property acquired with funds under this Agreement shall be retained for four (4) years after final disposition of such property. Records for any displaced person must be kept for four years after he/she has received final payment.
3. Client Data. Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.
 4. Disclosure. Subrecipient understands that client information collected under this Agreement is private and the use or disclosure of such information, when not directly connected with the administration of the City or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
 5. Property Records. The Subrecipient shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform with the "changes in use" restrictions specified in 24 CFR Parts 570.503(b)(8).
 6. National Objectives. Subrecipient agrees to maintain documentation that demonstrates that the activities carried out with funds provided under this Agreement meet one or more of the CDBG

program's national objectives: (a) benefit low/moderate income persons, (b) aid in the prevention or elimination of slums or blight, (c) meet community development needs having a particular urgency (as defined in 24 CFR Part 570.208).

7. Performance Monitoring. The City will monitor the performance of the Subrecipient against goals and performance standards required herein. Substandard performance as determined by the City will constitute non-compliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, contract suspension or termination procedures will be initiated.
8. Close-Outs. Subrecipient obligations to the City shall not end until all closeout requirements are completed. Activities during this closeout period shall include, but are not limited to: making final payments, disposing of program assets (including but not limited to the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), and determining the custodianship of records.
9. Audits and Inspections. All Subrecipient records with respect to any matters covered by this agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by Subrecipient within 30 days after receipt by Subrecipient. Failure of Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Subrecipient audits.

SECTION 8 ENFORCEMENT OF CONTRACT

1. Applicable Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of New York and the United States, as applicable. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Supreme Court of the County of Orange, State of York, or the United States District Court for the Southern District of New York. Subrecipient covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.
2. Disputes. In the event of any dispute arising under this Agreement, the injured party shall notify the insuring party in writing of its contentions by submitting a claim therefore. The injured party shall continue performing its obligations hereunder so long as the injuring party commences to cure such default within ten (10) days of service of such notice and completes the cure of such default within thirty (30) days after service of the notice, or such longer period as may be permitted by the injured party; provided that if the default is an immediate danger to the health, safety and general welfare, such immediate action may be necessary. Notwithstanding the foregoing, the City may suspend any further payment of CDBG funds until Subrecipient is in compliance with this Agreement. Compliance with the provisions of this Section shall be a condition precedent to termination of this Agreement for cause and to

any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the depute is not cured.

3. Remedies Upon Default by Subrecipient. In addition to any other rights or remedies available at law or in equity, if Subrecipient fails to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 8:
 - a. Temporarily withhold payment of CDBG funds pending correction of the default by Subrecipient;
 - b. Refuse to advance all or any part of the CDBG funds for the project and reallocate said funds to another activity;
 - c. Wholly or partially suspend or terminate the award and this Agreement; and;
 - d. Withhold further awards for the project and/or the facility; and
 - e. Require Subrecipient to repay any CDBG funds that the City determines were not expended in compliance with the requirements of this Agreement, the Act or the Regulations.
4. Termination for Convenience. This Agreement may be terminated for convenience as provided in 24 CFR Section 85.44.
5. Waiver. No delay or omission in the exercise of any right or remedy by a non- defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.
6. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.
7. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to complete specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of the Agreement.
8. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be

entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

SECTION 9 CITY OFFICERS AND EMPLOYEES

1. **Non-liability of City Officers and Employees.** No officer or employee of the City shall be personally liable to Subrecipient, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to Subrecipient or to its successor, or for breach of any obligation of the terms of this Agreement.
2. **Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his/her financial interest or the financial interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested, in violation of any State statute or regulation. Subrecipient warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.
3. **Indemnify and Hold Harmless.** Subrecipient agrees to indemnify, defend, and hold harmless City and its officers, agents and employees, from any liabilities, claims, suits or actions, losses or expenses, including attorney fees, caused by, arising out of, or in connection with, either directly or indirectly, Subrecipient's performance under this Agreement. Nothing herein shall be construed to require Subrecipient to indemnify the City, its officers, agents and employees against any responsibility or liability.

SECTION 10 MISCELLANEOUS PROVISIONS

1. Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid first-class mail at his/her address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

To City: City of Newburgh
attn.: City Clerk
83 Broadway, 1st Floor
Newburgh, New York 12550

copy to: City of Newburgh
attn.: Office of the Corporation Counsel
83 Broadway, 2nd Floor
Newburgh, New York 12550

To Subrecipient: Catholic Charities Orange Sullivan Ulster
27 Matthews St.
Goshen, NY 10924

2. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.
3. Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
4. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement that are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
5. Corporate Authority. The persons executing this Agreement on behalf of the parties hereby warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and, (iv) the entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

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Signature Page

City of Newburgh with Catholic Charities Orange Sullivan Ulster
Food Security and Emergency Income Payments in the City of Newburgh In Response to the
Coronavirus

IN WITNESS WHEREOF, the City and Subrecipient have caused this Agreement to be
executed in their respective names by their duly authorized representatives and their respective
seals to be hereunder affixed, all as of the date above-written.

DATED: May 20, 2021

CITY OF NEWBURGH

By: 

Name: Joseph P. Donat
Title: City Manager

DATED: May 12, 2021

Catholic Charities Orange Sullivan Ulster

By: 

Name: Shannon Kelly
Title: Chief Executive Officer

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this 20 day of May, in the year 2021, before me personally appeared
Joseph P. Donat, personally known to me or proved to me on the basis of satisfactory evidence to
be the individual whose name is subscribed to the within instrument and acknowledged to me that
he executed the same in his capacity, and that by his signature on the instrument, the individual,
or person upon behalf of which the individual acted, executed the instrument.

Jeremy Kaufman
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02KA6202389
Qualified in Dutchess County
Commission Expires March 16, 2025


NOTARY PUBLIC

STATE OF NEW YORK)

) ss.:

COUNTY OF ORANGE)

On this 12 day of MAY, in the year 2021, before me personally appeared
SHANNON KELLY, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his capacity, and that by his signature on the
instrument, the individual, or person upon behalf of which the individual acted, executed the
instrument.



LORETTA L. PEARSON
Notary Public, State of New York
Reg. No. 01PE6335588
Qualified in Sullivan County
Commission Expires 01/19/2024
NOTARY PUBLIC

EXHIBIT A – SCOPE OF WORK

Catholic Charities will use funds to support City of Newburgh residents dealing with food insecurity, rental arrears, assistance with utilities shortages in personal hygiene products and cleaning supplies for City of Newburgh families that have been put in isolation due to the Coronavirus Pandemic.

Catholic Charities proposes to assist approximately 200 families impacted by the Coronavirus Pandemic. (Actual number of assisted families subject to assistance required and availability of funds.)

EXHIBIT B - BUDGET

Services	Amount	Totals
Food Related Purchases		
Refrigerator for Food Closet	\$3,500.00	
Food	\$3,000.00	
Cleaning Supplies	\$1,500.00	
PPE Items for Clients	\$2,000.00	\$10,000.00
Direct Payment Items		
Rental Arrears	\$10,000.00	
Utilities	\$5,000.00	
Personal Hygiene	\$2,500.00	
Cleaning Supplies	\$2,500.00	\$20,000.00
Grand Total		\$30,000.00

*Allocations may change depending on the identified need of client(s).

RESOLUTION NO.: _____ 33 _____ - 2021

OF

FEBRUARY 22, 2021

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG-CV3)
SUB-RECIPIENT GRANT AGREEMENT IN THE AMOUNT OF \$30,000.00
WITH CATHOLIC CHARITIES OF ORANGE, SULLIVAN & ULSTER FOR
THE ALLOCATION OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT
FUNDING TO SUPPORT FOOD DISTRIBUTION PROGRAMS AND SERVICES

WHEREAS, by Resolution No. 6-2021 of January 11, 2021, the City Council adopted a second substantial amendment to the City of Newburgh Community Development Block Grant ("CDBG") FY2019 annual action plan for the allocation of Coronavirus Aid, Relief, and Economic Security ("CARES") Act funding; and

WHEREAS, the new Activities added to the CDBG FY2019 annual action plan include infrastructure assessment for internet access, emergency food service in the form of assistance to non-profit organizations engaged in food distribution programs and services, child care services, and neighborhood service programming for socially distant activities; and

WHEREAS, the City has received proposals from three qualified non-profit organizations to support and expand food distribution programs and services to City of Newburgh residents in need; and

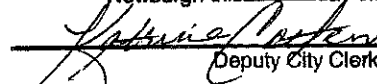
WHEREAS, it is recommended that Catholic Charities of Orange, Sullivan & Ulster ("Catholic Charities") be selected to receive funding to support and expand food distribution programs and services in an amount not to exceed \$30,000.00; and

WHEREAS, this Council finds it to be in the best interest of the City of Newburgh to enter into a sub-recipient grant agreement with Catholic Charities to provide said food distribution and services as set forth in its proposal;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to enter into a sub-recipient grant agreement with Catholic Charities of Orange, Sullivan & Ulster in the amount of \$30,000.00, with all such terms and conditions as may be required by the Corporation Counsel, to support and expand food distribution programs and services to City of Newburgh residents in need.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held Feb. 22, 2021 and that it is a true and correct copy of such original.

Witness my hand and seal of the City of Newburgh this 23rd day of Feb. 20 21


Deputy City Clerk

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER OR THE POLICE COMMISSIONER OR POLICE CHIEF, AS MANAGER'S DESIGNEE, TO EXECUTE AN INTER-MUNICIPAL AGREEMENT WITH THE COUNTY OF ORANGE CONFIRMING CITY OF NEWBURGH PARTICIPATION IN THE STOP-DWI PROGRAM FOR THE ENFORCEMENT PERIOD OF MARCH 12, 2022 TO JANUARY 1, 2023 AND TO ACCEPT AN AWARD NOT TO EXCEED \$4,550.70 COVERING 70 PERSON-HOURS FOR THE FIRST ENFORCEMENT PERIOD OF 2022 (MARCH 12, 2022 - JUNE 1, 2022)

WHEREAS, the County of Orange (hereinafter "County") has provided the City of Newburgh (hereinafter "City") with an Inter-Municipal Agreement for a full year of participation to provide for the funding of the STOP-DWI Program within the City of Newburgh and an award notification for the enforcement period of March 12, 2022 and ending January 1, 2023; and

WHEREAS, the City of Newburgh agrees to participate in three (3) STOP DWI Program enforcement campaign periods as follows: First Enforcement Period - March 12, 2022 through June 1, 2022, which includes St. Patrick's Day and the Memorial Day holiday weekend; Second Enforcement Period - July 1, 2022 through September 6, 2022, which includes the Independence Day and Labor Day holiday weekend enforcement campaigns; and the Third Enforcement Period - November 11, 2022 through January 1, 2023, which includes Thanksgiving, Christmas and New Year's holiday enforcement campaigns; and

WHEREAS, the County shall reimburse the City of Newburgh for increased patrol and court time in connection with enhanced enforcement of laws prohibiting driving while intoxicated; and

WHEREAS, based on the data submittals submitted for the prior year the City of Newburgh is eligible for an award not to exceed \$4,550.70 covering 70 person-hours for the First Enforcement Period of 2022; and

WHEREAS, the County will notify the City in writing of its eligibility for awards, if any, for the second and third enforcement periods of 2022 by a separate written award letter prior to the commencement of each such enforcement period; and

WHEREAS, this Council has determined that entering into such agreement would be in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager or the Police Chief, as Manager's designee, be and he is hereby authorized to execute an Inter-Municipal Agreement with the County of Orange confirming the City's participation in the STOP-DWI Program for the period March 12, 2022 through January 1, 2023 in order to fund the additional cost of stepped-up police patrols and related court appearances and providing the City of Newburgh with an award not to exceed \$4,550.70 covering 70 person-hours for the First Enforcement Period of 2022 (March 12, 2022 through June 1, 2022); and

BE IT FURTHER RESOLVED, that the City Council of the City of Newburgh, New York that the City Manager, or the Police Commissioner or Police Chief as Manager's designee, be and he is hereby authorized to accept subsequent awards for the Second Enforcement Period (July 1, 2022 through September 6, 2022) and Third Enforcement Period (November 11, 2022 through January 1, 2023) covered by the 2022 STOP-DWI Agreement; and to execute all necessary documents to receive and comply with the terms of such Agreement and to carry out the program funded thereby.

RESOLUTION NO.: _____ - 2022

OF

MARCH 14, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH THE CATHEDRAL AT THE HOUSE
F/K/A HOUSE OF REFUGE
TO ALLOW USE OF CITY OWNED PROPERTY LOCATED AT
140 BROADWAY FOR THE HEALTHY ORANGE FARMERS MARKET**

WHEREAS, the City of Newburgh is the owner of several parcels of real property located at 132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway"; and

WHEREAS, the Healthy Orange Farmers Market f/k/a Tuesday Farm Market has been held at 140 Broadway since 2012 and provides the following benefits:

1. To provide greater visibility to attract more buyers and vendors;
2. To promote positive activity on Broadway; and
3. To provide more space for Orange County agencies to provide information and conduct demonstrations for the community; and

WHEREAS, holding the Healthy Orange Farmers Market at 140 Broadway requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to enter into the attached license agreement with The Cathedral at The House to allow access to and use of several City-owned properties for the purpose of holding the Healthy Orange Farmers Market.

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, 2022, by and between The Cathedral at The House f/k/a HOUSE OF REFUGE, with offices at 131 Broadway, Newburgh, New York 12550 as "LICENSEE; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor and in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway".

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 140 Broadway, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, tables, chairs and other materials as may be necessary; for the purposes of hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies on property owned by Licensor. No permanent improvements may be erected on the premises.

Second: Licensee agrees to use and maintain said facilities in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority obtaining any and all permits required thereby.

Third: Licensor acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

Fourth: Licensee hereby agrees to defend, indemnify and hold Licensor harmless against any claims, actions and proceedings brought against Licensor arising out of, in connection with and/or relating to Licensee's use of the premises. Licensee has posted evidence of and shall maintain throughout the term of this License public liability insurance naming the Licensor as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Fifth: This Agreement and the license or privilege term is from July 5, 2022 to November 1, 2022.

Sixth: It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties hold said premises.

Seventh: Without limitation to the general provisions of this Agreement, it is understood and agreed that said facilities shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH
LICENSOR

By: _____
TODD VENNING, City Manager
Per Resolution No.:

THE CATHEDRAL AT THE HOUSE
F/K/A HOUSE OF REFUGE
LICENSEE

By: _____
BISHOP JEFFREY WOODY

Approved as to Form:

JANICE GASTON
City Comptroller

Approved as to Form:

MICHELLE KELSON
Corporation Counsel

From: [Jeffrey Woody](#)
To: [Resto, Autumn](#)
Subject: Use of Broadway Lot
Date: Tuesday, February 22, 2022 4:10:53 PM

Good Afternoon Autumn,

The Cathedral at The House is looking to use the lot again for The Healthy Orange Farmers Market from July 5, 2022 through November 1, 2022.

Please advise.

Regards,

Bishop Woody

There is A Possibility!